

Stephen McCollum, et al. v.
Brad Livingston, et al.

Richard C. Thaler
October 18, 2013

<p style="text-align: right;">21</p> <p>1 disciplinary coordination office.</p> <p>2 And then the third deputy director</p> <p>3 would be responsible for prison and jail operations.</p> <p>4 Most direct contact dealing with operations on</p> <p>5 facilities within the regional directors, and</p> <p>6 responsible for security systems program and our</p> <p>7 canine program.</p> <p>8 Q. I'm sure there is a good distinction. I'm</p> <p>9 having to -- with the first director group, you</p> <p>10 mentioned that one of their responsibilities was</p> <p>11 management and operations of the prisons?</p> <p>12 A. Right.</p> <p>13 Q. How does that differ from the third</p> <p>14 category, which you described as prison or jail</p> <p>15 operations?</p> <p>16 A. Yeah. Management operations is inclusive of</p> <p>17 those specific areas that I referenced, security</p> <p>18 threat group. So any issues that deal with security</p> <p>19 threat group processing, identification, that</p> <p>20 particular deputy director would be responsible for</p> <p>21 dealing directly with the wardens in that area.</p> <p>22 Again, the training components, training needs, that</p> <p>23 particular deputy director would deal directly with</p> <p>24 any specific training needs that the wardens or our</p> <p>25 regional directors might feel that they need.</p>	<p style="text-align: right;">23</p> <p>1 another position within the agency.</p> <p>2 Q. Do you know what position he moved into?</p> <p>3 A. The division director over administrative</p> <p>4 review and risk management.</p> <p>5 Q. Okay.</p> <p>6 A. Support operations was Tommy Prasifka.</p> <p>7 Tommy held that position the entire time that I was in</p> <p>8 my position.</p> <p>9 Q. Okay.</p> <p>10 A. And then the third individual in prison and</p> <p>11 jail operations was Bill Stephens. And, again, he</p> <p>12 held that position shortly after -- again, all of</p> <p>13 those were selected in September or October of 2009</p> <p>14 and held their positions as I indicated.</p> <p>15 Q. And it's my understanding that Mr. Stephens</p> <p>16 replaced you upon retirement?</p> <p>17 A. Yes, sir, he did.</p> <p>18 Q. And Mr. Stephens is in the room listening to</p> <p>19 this deposition. Correct?</p> <p>20 A. Yes, he is.</p> <p>21 Q. Okay. All right. Now, as we go up the</p> <p>22 regional directors and then the deputy directors, then</p> <p>23 do we get to your position, sir?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And tell me again a little bit about your</p>
<p style="text-align: right;">22</p> <p>1 The last position that identified the</p> <p>2 prison and jails, that would be the individual that</p> <p>3 would be responsible for overseeing all of the other</p> <p>4 basic activities that occurred on the facilities,</p> <p>5 reviewing most reports that are generated from the</p> <p>6 regional office would report directly to that prison</p> <p>7 and jail deputy director.</p> <p>8 Q. Okay. Okay. Does each region have three</p> <p>9 deputy directors?</p> <p>10 A. No, sir. Those three deputy directors are</p> <p>11 located in the central office and support all six</p> <p>12 regional directors. And at that time, it was all 95</p> <p>13 facilities out in the field.</p> <p>14 Q. Gotcha.</p> <p>15 Who were the three deputy directors for</p> <p>16 the time period, let's say, 2009 through your</p> <p>17 retirement?</p> <p>18 A. Okay. Initially, the three deputy directors</p> <p>19 in -- that reported to me were Oscar Mendoza. He was</p> <p>20 in management operations. I want to say he assumed</p> <p>21 that position in 2000 -- October 2009, September or</p> <p>22 October 2009. I'm not specific on that date.</p> <p>23 Q. Okay.</p> <p>24 A. He held that position until fairly recently.</p> <p>25 Just prior to my retirement, he moved into a --</p>	<p style="text-align: right;">24</p> <p>1 position, what the true role is?</p> <p>2 A. As the Correctional Institutions Division</p> <p>3 director, my role is to supervise that entire chain of</p> <p>4 command that I just outlined there.</p> <p>5 Q. So you supervise the deputy directors?</p> <p>6 A. I supervise the deputy doctors, who then</p> <p>7 supervise the regional directors, who supervise the</p> <p>8 wardens, who supervise the staff on the facilities,</p> <p>9 yes, sir.</p> <p>10 Q. So you're responsible for all of the</p> <p>11 officers, I assume, in your chain of command, but</p> <p>12 you're most responsible for making sure that the</p> <p>13 deputy directors are doing their job properly?</p> <p>14 A. That's who I have most of my contact with</p> <p>15 and most of the information is disseminated up the</p> <p>16 chain of command through them and back down the chain</p> <p>17 of command through my deputies, yes, sir.</p> <p>18 Q. Do you have any personal dealings one-on-one</p> <p>19 or with others in the organization with the regional</p> <p>20 directors?</p> <p>21 A. Sure. Sure. Each -- each month, normally,</p> <p>22 at a minimum, we would have a Correctional</p> <p>23 Institutions Division directors meeting where we would</p> <p>24 bring in the regional directors, along with the deputy</p> <p>25 directors, along with some department and division</p>

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<p style="text-align: right;">25</p> <p>1 heads, to discuss pertinent issues, again, to give 2 information to those regional directors to disseminate 3 out into the field through their wardens meetings and, 4 subsequently, to staff on the facilities through the 5 individual administrations holding their meetings. 6 Q. Through those meetings you're able to get a 7 better sense of what is going on in the regions. Is 8 that fair? 9 A. In most cases. Those meetings, in most 10 cases, are an opportunity for the central office to 11 disseminate information back down the chain. 12 Information from the field, in all cases, doesn't 13 necessarily wait for a meeting to flow up the chain. 14 Q. Okay. So nothing would have prevented 15 Mr. Eason from contacting you directly about a problem 16 in his region. Correct? 17 A. No. 18 Q. He might go through Mr. Stephens or 19 Mr. Mendoza, but it would eventually get to you. Is 20 that fair? 21 A. Depending on the level of the problem, it 22 surely might get to me, yes, sir. 23 Q. Okay. At the regional meetings that you 24 just mentioned, are wardens generally included? 25 A. No, sir.</p>	<p style="text-align: right;">27</p> <p>1 meetings, your higher level director meetings. 2 Correct? 3 A. Yes, sir. 4 Q. One of those high level issues was the 5 dangers of extremely hot temperatures in the prison. 6 Right? 7 A. We surely discussed that issue. 8 Q. You discussed that in 2009, 2010, 2011, 9 2012, 2013. Right? 10 A. Yes, sir. 11 Q. Did you review any documents in preparation 12 for your deposition today, sir? 13 A. Yes, sir. 14 Q. Okay. Would you show me what documents you 15 reviewed? 16 A. I don't know if I have that list, but in 17 most cases -- 18 Q. Well, now, let me stop you. I don't care 19 about most cases. 20 A. Okay. 21 Q. I care about what you reviewed in this -- to 22 prepare for this particular deposition? 23 A. Okay. I reviewed the deposition that was 24 taken from Mr. Eason. 25 Q. Okay.</p>
<p style="text-align: right;">26</p> <p>1 Q. Do the regional directors have their own set 2 of meetings with the wardens on a monthly basis? 3 A. I wouldn't say that there is not a month 4 that has been missed, but normally there would be at 5 least one meeting each month. Historically, regional 6 directors have held those meetings. As a regional 7 director, I held those meetings with my wardens 8 monthly to, again, discuss current issues and 9 disseminate information to the field. 10 Q. Do you know if they're as formal as the 11 director meetings that you held on a monthly basis 12 where there would be minutes and notes taken and 13 agendas created? 14 A. I can't say in all cases there are. In some 15 cases there very well might be. As a regional 16 director, I surely initiated a formal agenda when I 17 held my meetings, but there is no necessarily 18 requirement. In most cases, I would assume that the 19 regional directors out there in the field would cover 20 issues that are pertinent to their particular regions, 21 in addition to any information that was given to them 22 at our Correctional Institutions Division meeting. 23 Q. In any event, you would expect the regional 24 directors to disseminate information that you thought 25 was important that was discussed at your director</p>	<p style="text-align: right;">28</p> <p>1 A. I reviewed the deposition that was taken 2 from Mr. Vian. The deposition that was taken from 3 Warden Pringle. The deposition that was taken by, I 4 believe, Lieutenant Sanders. I reviewed 82.15, which 5 is the EAC summary review. I reviewed -- it's been 6 some time, but AD 10.64, dealing with temperature 7 extremes. I have read the document compelling me to 8 be deposed. The amended complaint on the McCollum 9 case. I have recently been served -- not necessarily 10 in preparation for this deposition, but have recently 11 been served with the Adams, Webb, and Togonidze, I 12 believe, I have reviewed those. 13 Q. You and I will both have trouble going 14 through all of the names, but what I'm really -- I 15 assume that you've looked at that complaint. But is 16 there anything about that complaint that you prepared 17 for this deposition for? 18 A. No, I didn't. 19 Q. Okay. 20 A. Again, after being retired from the agency, 21 I didn't have access to records or documents that were 22 back with the agency. So I have reviewed American 23 Correctional Association standards in general. 24 Q. Which ones? 25 A. Specifically those that deal with the</p>

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<p style="text-align: right;">29</p> <p>1 accreditation process of the Hutchins Unit. 2 Q. In preparation for this deposition or just 3 generally through the course of your career? 4 A. In preparation for this deposition. 5 Q. Okay. Anything else? 6 A. Not that I can -- not that I can think of. 7 Q. All right. Let me just roll through them 8 and I apologize for being boring. It's just important 9 for me to be thorough, at least at this time. 10 What I heard you say, and if I got 11 something wrong, please correct me. This is not -- 12 I'm not trying to... 13 You read Director Eason's deposition? 14 A. Yes, I did. 15 Q. You read Mr. Vian's deposition? 16 A. Yes, sir. 17 Q. You read Warden Pringle's deposition? 18 A. Yes, sir. 19 Q. And he has given a couple of depositions. 20 Did you read multiple parts of his deposition -- 21 A. No. If there is a second, I have not read 22 that one. 23 Q. Okay. 24 A. I'm assuming I read the first. 25 Q. Okay. Lieutenant Sanders?</p>	<p style="text-align: right;">31</p> <p>1 to mitigate those heat issues for many years didn't 2 stop at the dorm door. 3 Q. Okay. 4 MR. EDWARDS: Let me just object as 5 nonresponsive after "sure." 6 Q. (BY MR. EDWARDS) And that's just lawyering 7 stuff, so... 8 Do you know why there isn't -- strike 9 that. 10 Do you know why there wasn't an actual 11 policy designed and implemented by the Texas 12 Department of Criminal Justice concerning extremely 13 high temperatures inside the housing areas? 14 A. Well, I think in reviewing our efforts over 15 the years that I have been with the system, 16 particularly in the administrative positions from 17 where -- the warden's position and above, those steps 18 were initiated at the facility level. For many years, 19 as I'm sure we'll get to here eventually, an e-mail 20 has been sent out from the central administration 21 outlining the need to ensure we're addressing 22 heat-related conditions in all areas of our facility. 23 Q. Sure. 24 A. Very few -- very few issues in our system 25 rise to the level that the central office has for many</p>
<p style="text-align: right;">30</p> <p>1 A. Yes, sir. 2 Q. Okay. Did you read any of the depositions 3 of the other correctional officers? 4 A. No, sir. 5 Q. Okay. 82.015, which is the EAC summary 6 review process? 7 A. I believe so, yes, sir. 8 Q. Okay. Policy 10.64, which is dealing with 9 temperature extremes -- 10 A. Extremes -- 11 Q. -- in the workplace only. Correct? 12 A. Yes. That's -- yes. 13 Q. It doesn't -- it's not a policy designed for 14 assessing indoor housing temperatures. Correct? 15 A. The directive currently does not address 16 that issue, yes, sir. 17 Q. That is a -- is that a hole in the system 18 that you think should be fixed? 19 A. Sure. I think that through discussions 20 with -- in these cases, to make sure that staff is 21 clear on -- extremely clear on their obligations out 22 there. And I would feel, from being a warden in the 23 field for many years, I was pretty clear that heat 24 extremes could occur in any area of the facility, 25 inside or outside. So mitigation steps that we took</p>	<p style="text-align: right;">32</p> <p>1 years put out basically a public notice to all staff 2 as this is a high priority in our system. So that had 3 served to be effective for many years to bring focus 4 to the subject matter going into each seasonal period. 5 And that, in addition to the policies that we have in 6 place about appropriately housing the offenders in our 7 system as a whole, dealt with those issues. 8 Q. Okay. You're talking about this informal 9 e-mail that went out every year, every May, about the 10 dangers of heat and you've got to take steps to 11 protect inmates from the dangers of heat. Right? 12 A. Yes, sir. 13 Q. Okay. And there has been testimony in this 14 case that that served as some sort of de facto 15 practice or policy of the agency. Would that be your 16 opinion as well? 17 A. It surely served as a directive memo to the 18 agency for staff to take at a minimum those 19 precautionary steps to mitigate the heat. 20 Q. Okay. But my question is a little bit 21 different. My question is, why did that informal 22 e-mail not become a formal agency process, if you 23 know? 24 A. I don't know specifically why it didn't 25 become a formal process, but that directive is just as</p>

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<p style="text-align: right;">33</p> <p>1 strong as any policy that is put in place. And, in 2 fact, in some cases, emphasizes the subject matter 3 even more so. 4 Q. Has anybody in the Texas Department of 5 Criminal Justice ever been disciplined for not 6 adhering to that informal e-mail, to your knowledge? 7 A. I don't know to my knowledge. I don't know 8 of anyone to my knowledge. 9 Q. Okay. Are you aware of anyone not 10 adequately protecting inmates from heat, to your 11 knowledge? 12 A. To my knowledge -- can you repeat the 13 question? 14 Q. Yeah. Are you aware of anyone ever in the 15 Texas Department of Criminal Justice system not 16 adequately protecting inmates from the dangers of 17 extreme heat? 18 MS. COOGAN: Objection. Form. 19 Q. (BY MR. EDWARDS) And I assume you would be. 20 A. Well, again, directly in those -- in those 21 cases out there, I am trying to remember of a specific 22 incident. But we do have processes and procedures out 23 there, and I'm not going to attest that every staff 24 member that has ever been in our agency has always 25 followed those. But a specific example, I can't name</p>	<p style="text-align: right;">35</p> <p>1 Q. Can you elaborate on that, because you've 2 got me at a little bit of a disadvantage. I'm not 3 as -- I'm sure I'm not as familiar with those as you 4 are. 5 A. Okay. Again, each facility that we have 6 within our agency is required to go through an 7 accreditation process that is performed by the 8 American Correctional Association. That association 9 comes in and evaluates every facility against the 10 national standards of conditions, conduct of staff, 11 access to medical care, appropriate treatment and 12 classification of offenders, and quality of life. So 13 Hutchins is surely one of those facilities that has 14 gone through that process, and I reviewed those 15 documents to see when they had gone through that 16 process. 17 Q. Okay. When did Hutchins go through that 18 process? 19 A. They've actually been through that process, 20 I believe, three times, because they're reaccredited 21 every three years. An institution is required to go 22 through every 36 months. So my recollection says that 23 the last time they went through it was actually this 24 year. I want to say it was January of 2013. And I 25 believe the two subsequent reviews were done in 2010</p>
<p style="text-align: right;">34</p> <p>1 one for you. 2 Q. Well, if somebody were to violate your 3 formal policy, 10.64, temperature extremes in the 4 workplace, that would be clearly delineated and there 5 would be a discipline process for that. Correct? 6 A. Could be a disciplinary process, but could 7 be -- it could be counseling. 8 Q. Sure. What the discipline process would be, 9 that's up to you? 10 A. Right. 11 Q. But there would be a clear line that this 12 doesn't fly because you're violating a policy? 13 A. Right. 14 Q. Fair? Okay. There is a difference between 15 kind of an informal e-mail directive and a formal 16 agency policy in your mind, isn't there? 17 A. I would agree. 18 Q. Okay. Having a formal agency policy 19 suggests greater importance. Is that fair? 20 A. I could agree with that, yes. 21 Q. Okay. We've got the temperature extremes. 22 Now, you mentioned the ACA standards generally, and I 23 believe you said, in particular, as to the 24 accreditation process at Hutchins? 25 A. Yes, sir.</p>	<p style="text-align: right;">36</p> <p>1 and 2007. 2 Q. Any talk about the indoor temperatures in 3 those documents? 4 A. There is talk about the environmental 5 conditions in the housing areas. There are standards 6 that deal with air flow, there are standards that deal 7 with the temperature as a whole, and in those audits, 8 Hutchins passed those standards. 9 Q. Do you know if any of the audits took place 10 in the summer? 11 A. I want to say that Hutchins was audited in 12 January one year and maybe the spring. I don't know 13 that any of them took place in the summer. 14 Q. Did any of them take place when it was 15 110 degrees outside? 16 A. Again, I don't know what the temperature was 17 when those audits took place. But, again, as I 18 recall, those audits took place during the beginning 19 of the year. 20 Q. Okay. Did you make available or do you know 21 if the internal heat temperature documents which 22 register readings in the 130s, 140s, even 150 degrees 23 in the period of July 2011 were ever made available to 24 any ACA member? 25 MR. GARCIA: Objection.</p>

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<p>37</p> <p>1 Mischaracterizes the evidence.</p> <p>2 A. I do not know what documents the team</p> <p>3 reviewed when they conducted their audit.</p> <p>4 Q. (BY MR. EDWARDS) Okay. Who would?</p> <p>5 A. I would assume the ACA panel might.</p> <p>6 Q. Who is that?</p> <p>7 A. That's the national accreditation panel that</p> <p>8 actually performed the audit theirself. They produce</p> <p>9 a report of their findings. That report goes to a</p> <p>10 panel who considers accreditation.</p> <p>11 Q. All right. Well, have you ever -- I mean,</p> <p>12 were you aware that there are documents in this</p> <p>13 particular case which indicate apparent indoor</p> <p>14 temperatures -- or excuse me.</p> <p>15 Are you aware that there are documents</p> <p>16 in this case which show that the outside temperature,</p> <p>17 when you count actual temperature plus humidity,</p> <p>18 apparent temperature, exceeded 130 degrees?</p> <p>19 MS. COOGAN: Objection. Form.</p> <p>20 MR. GARCIA: Objection.</p> <p>21 Mischaracterizes testimony. And evidence.</p> <p>22 A. I believe, in the documents that I received,</p> <p>23 I can't remember if that was referenced. I remember a</p> <p>24 document, I want to say maybe an attachment in</p> <p>25 Mr. Eason's deposition, that referenced a temperature</p>	<p>39</p> <p>1 130 degrees. Would that cause you concern?</p> <p>2 A. It would surely cause me to make sure that</p> <p>3 those individuals at that unit were taking -- making</p> <p>4 all mitigation attempts to address issues to ensure</p> <p>5 that all of the mitigation steps that we have put in</p> <p>6 place were put in place, to make sure that those unit</p> <p>7 administrators were discussing any necessary issues</p> <p>8 with risk management, with health services, to ensure</p> <p>9 that all actions that were being taken were sufficient</p> <p>10 to deal with the issue.</p> <p>11 Q. Okay. So if you -- those high temperatures,</p> <p>12 you would say, look, wardens have to review those</p> <p>13 temperature logs. Correct?</p> <p>14 A. Yes, sir. I would hope that the wardens</p> <p>15 were reviewing the temperature logs. Yes, sir.</p> <p>16 Q. And your expectation would be that the</p> <p>17 warden would then take appropriate measures when</p> <p>18 you're dealing with extreme temperatures. Correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Are you aware of the chart by the --</p> <p>21 the weather chart that's in a lot of your training</p> <p>22 documents?</p> <p>23 A. I believe it's similar to the one that is in</p> <p>24 1064, I believe.</p> <p>25 Q. Exactly. Where it talks about heat stroke</p>
<p>38</p> <p>1 of -- of somewhere close to the hundred range. So</p> <p>2 that's a temperature document I remember. I don't</p> <p>3 remember if that document referenced a heat index or</p> <p>4 not. So if I have reviewed it, I don't remember</p> <p>5 seeing it.</p> <p>6 Q. (BY MR. EDWARDS) Okay. Well, I mean, in</p> <p>7 your job as a -- and was -- is it director of the</p> <p>8 criminal institution division, is that your formal</p> <p>9 title, sir?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. In that role, did you ever review the</p> <p>12 temperature readings at the prisons that you were</p> <p>13 supervising during the summer periods?</p> <p>14 A. Not personally. I cannot say that I</p> <p>15 reviewed temperature documents from every system or</p> <p>16 any unit that was out there on the -- I relied on my</p> <p>17 wardens.</p> <p>18 Q. Okay. And I just want to be -- I'm not</p> <p>19 asking if you reviewed every single document ever.</p> <p>20 A. Okay.</p> <p>21 Q. I'm asking if you reviewed any of them?</p> <p>22 A. I do not remember reviewing an individual</p> <p>23 document per se.</p> <p>24 Q. Let's say a document was sent to you which</p> <p>25 said that the temperature, heat and humidity, is above</p>	<p>40</p> <p>1 may be possible, or heat stroke might be probable, or</p> <p>2 heat stroke is imminent?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. What does the word "imminent" mean to</p> <p>5 you?</p> <p>6 A. Immediate.</p> <p>7 Q. Okay. That's what it means to me. Would it</p> <p>8 surprise you that that's not what it means to</p> <p>9 Warden Pringle?</p> <p>10 MR. ANASTASIDIS: Objection. Calls for</p> <p>11 this witness to speculate as to what another person</p> <p>12 might believe or might not believe.</p> <p>13 A. Again, imminent, to me, is immediate. I</p> <p>14 would think that most individuals would interpret it</p> <p>15 as that.</p> <p>16 Q. (BY MR. EDWARDS) Okay. It would be</p> <p>17 dangerous to interpret it any other way. Right?</p> <p>18 MR. GARCIA: Objection. Speculation.</p> <p>19 A. Again, that would be my interpretation of it</p> <p>20 as being immediate.</p> <p>21 Q. (BY MR. EDWARDS) I appreciate that because</p> <p>22 I think we can agree that's what the word actually</p> <p>23 means. But my question -- and let me withdraw that</p> <p>24 part of it -- but my question is, if you treat the</p> <p>25 word "imminent" as meaning just possible, and that's</p>

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<p style="text-align: right;">41</p> <p>1 in your policies to protect inmates, if you treat it 2 that way, wouldn't you be necessarily endangering 3 inmates? 4 A. Well, and again, I would say that imminent, 5 in my definition, would be immediate. So immediate 6 would mean that whatever circumstance you happen to be 7 talking about would -- would occur in a short period 8 of time. 9 Q. Of course. If you're about to go over a 10 waterfall that would be an imminent danger. Right? 11 A. I would agree. 12 Q. It's not possible, it's imminent. 13 Different. Right? 14 A. I would agree. 15 Q. Okay. All right. The -- within the three 16 deputy director groups, sir, what does the... 17 A. Director of manufacturing logistics? 18 Q. You've got better hearing than me. Yes. 19 What does the director of manufacturing logistics do? 20 A. That director position was responsible for 21 supervising offender industry within the institutions, 22 warehousing for the system, freight transportation for 23 the system. Those were the -- were the major 24 components of that position. 25 Q. I mean, would that include kind of the</p>	<p style="text-align: right;">43</p> <p>1 A. No, sir. 2 Q. Okay. In fact, you wouldn't even be in that 3 line of implementation or ability to stop that? 4 A. No, sir. 5 Q. We would go Director Livingston, CFO 6 McGinty, Mr. Matt Demny. Fair? 7 A. Again, I don't know who is the final 8 approval for that, but Matt Demny, as the division 9 director, would be involved in that process. 10 Q. Okay. Prior to this year, were you aware 11 that TDCJ was spending hundreds of thousands of 12 dollars on cooling equipment for pigs? 13 A. No, sir. 14 Q. Does that offend you, when they don't spend 15 it on inmates? 16 A. Again, I wouldn't compare my offender 17 population to swine, but again -- 18 Q. Why not? 19 A. I can't speak -- I can't speak to what the 20 needs are of the agriculture division. 21 Q. Would you place the needs of your inmate 22 population on at least an equal level to the needs of 23 the swine in the division? 24 A. Again, I wouldn't -- I wouldn't put them in 25 the same priority level. It's obvious that the</p>
<p style="text-align: right;">42</p> <p>1 management of the agricultural programs relating to 2 pigs? 3 A. No, sir. At one time that was included, but 4 that was separated out years ago. 5 Q. Who runs that? 6 A. Again, when I left the agency in May, 7 Matt Demny was the director of that particular 8 division. 9 Q. Where is he on the kind of the structural 10 chain? Who is his supervisor and how high does it go? 11 A. I believe he would report, in the 12 organizational structure, through the chief financial 13 officer. 14 Q. Who is that? 15 A. It would be Jerry McGinty. 16 Q. Is the chief financial officer at your 17 structural level or is he above you? 18 A. He reported directly to the executive 19 director, so I mean, he was basically another 20 division. 21 Q. Is that Director Livingston? 22 A. Yes, sir. 23 Q. Okay. So any decision to provide cooling 24 for pigs, that would not be something that you would 25 have been responsible for?</p>	<p style="text-align: right;">44</p> <p>1 offender population is our ultimate responsibility and 2 appropriate care of them surely takes priority. 3 Q. Okay. All right. Is Director Livingston at 4 your regional director meetings? 5 A. No, sir. Not normally, no, sir. 6 Q. Normally not? 7 A. Normally not. 8 Q. Does he get -- how is he made aware of 9 issues in the system that you have identified as 10 needing policies or needing changes? 11 A. Again, there is a -- the major communication 12 and efforts between myself in my role as a division 13 director and Mr. Livingston was face-to-face 14 communication, and myself delivering information to 15 Mr. Livingston on current issues within my division or 16 reviewing, in some cases, particular incidents. 17 Q. Do you ever send him e-mails? 18 A. Not very often. I was right down the 19 hallway from him. So if there was an incident where 20 he happened to be maybe in Austin during the 21 legislative session and I happened to be in Huntsville 22 and there was an incident, I might have sent him an 23 e-mail. But -- but in most cases I either picked up 24 the phone and told him directly or went down with a 25 face-to-face meeting and briefed him on issues.</p>

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<p style="text-align: right;">45</p> <p>1 Q. So you would occasionally send him e-mails 2 about particular issues in the prison system? 3 A. Again, very -- very infrequently. I can't 4 remember the last time that I sent him an official 5 e-mail briefing him on anything, but I'm not going to 6 sit here and say that I've never sent him an e-mail. 7 Q. Were you ever told not to send e-mails to 8 him? 9 A. Never. 10 Q. Never told that they might be a matter of 11 public record, so communicate directly with me? 12 A. Never thought about that at all. 13 Q. I appreciate that, but Director Livingston 14 never told you that? 15 A. Never told -- never told me that at all. 16 MR. ANASTASIDIS: Jeff, I don't want to 17 break up your train of thought, but we did discuss 18 things that Mr. Thaler reviewed, and one of them was 19 the ACA standards. This is a copy for you if you 20 would like to use it or just have it for your records. 21 MR. EDWARDS: Sure. Thank you very 22 much. 23 Q. (BY MR. EDWARDS) Would you like to take a 24 short break? 25 A. Sure.</p>	<p style="text-align: right;">47</p> <p>1 that dealt with subject matter for the entirety of the 2 field out there, quite possibly. 3 Q. Robert Eason, is he a personal friend of 4 yours or are you more business colleagues? 5 A. Business colleague. 6 Q. Okay. And I don't mean to suggest that you 7 don't think he is nice or anything like that, I 8 just -- what about Director Stephens, are you personal 9 friends as well as business colleagues? 10 A. I would consider him a friend, but more so 11 our relationship has been business. 12 Q. Okay. Do you send e-mails -- did you send 13 e-mails to Mr. Stephens in the course of your career 14 as director of the criminal institution division? 15 A. I'm sure there -- there are some e-mails out 16 there, yes, sir. 17 Q. Did you ever send him an e-mail about the 18 high rate of deaths due to extreme heat in the Texas 19 prison system? 20 A. I don't recall a specific e-mail about that 21 subject matter. 22 Q. Did you ever talk to him about it? 23 A. Yes, sir. 24 Q. What did you talk to Director Stephens about 25 the dangers of extreme heat in the Texas prison system</p>
<p style="text-align: right;">46</p> <p>1 Q. Or do you want to keep going? It's really 2 up to you. 3 A. How long are you going to keep me here? If 4 you're going to keep me here for three more hours, 5 then -- 6 Q. I'm going to keep you here for probably 7 three more hours, but not much more than that. 8 MR. ANASTASIDIS: Jeff, I would like a 9 break. There is additional documents. These are some 10 of the ACA documents, but I want to make sure you have 11 all of the ACA documents he reviewed. 12 MR. EDWARDS: Sure. Okay. Let's take 13 a break and why don't you get those for me and that 14 would be great. 15 THE VIDEOGRAPHER: We're off the record 16 at 9:55 a.m. 17 (RECESS.) 18 THE VIDEOGRAPHER: We're back on the 19 record the time is 10:14 a.m. 20 Q. (BY MR. EDWARDS) Did you ever send e-mails 21 to Director Eason? 22 A. I cannot recall -- I cannot recall any 23 incident that I would have sent him an e-mail 24 directly, necessarily. If I send directives out, it 25 could have been general mainframe e-mails potentially</p>	<p style="text-align: right;">48</p> <p>1 and the resulting deaths that happened from them? 2 A. Well, as was discussed earlier, we had many 3 discussions going into the seasonal periods of each 4 year. Mr. Stephens was surely involved in our 5 meetings with the regional directors. Any issues that 6 were to arise, again, Mr. Stephens in most cases was 7 the first contact point from the regional director 8 level. So if it was a particular issue that needed to 9 be discussed, he would normally make contact with me. 10 Again, in most cases, we made a practice of meeting to 11 discuss most issues at the end of each business day, 12 and in some cases that is the time when we would 13 discuss any matters that arose on the unit that he 14 thought that I needed to be aware of. 15 Q. Some of those conversations at the end of 16 business days included the problems associated with 17 heat inside the prisons? 18 A. Some of those discussions during summer 19 months would have included what steps were being taken 20 out on the facilities to deal with heat-related 21 issues, yes, sir. 22 Q. Did you ever talk -- well, okay. 23 Tell me about the actual process 24 that -- of how policies are made at TDCJ, how exactly 25 are they made, if you know?</p>

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<p style="text-align: right;">49</p> <p>1 A. Well, as I can speak from a division 2 director's level. If there is an identified need for 3 policy development, then the proponents in that 4 particular division would initiate that policy. There 5 surely would be input from the divisional leadership 6 and those elements within that division that that 7 policy would affect. That policy would be put out in 8 draft form. If that policy affected any other 9 division, there would be an opportunity to process 10 that for review from all those divisions through our 11 Executive Services Division. 12 If the policy crossed divisional lines, 13 then it would fall in the category of an 14 administrative directive. And that administrative 15 directive, after review, modification, and processing, 16 would be finalized and then forwarded for signature to 17 the appropriate entity. 18 Q. Okay. I think you threw a lot out at me, 19 and I just want to -- anyone can identify a need and 20 draft a policy. Is that correct? 21 A. Not anyone. But a -- an issue that is -- 22 requires a policy direction, depending on what that 23 need happens to be. The agency has, currently, 24 hundreds of policies, so there -- it's not very 25 frequently that new policies are adopted. In many</p>	<p style="text-align: right;">51</p> <p>1 of individuals, yes, sir. 2 Q. Okay. Don't you think you need such a 3 policy? 4 A. Well, again, as we spoke earlier, the issue 5 that you're referencing is the issue of ensuring that 6 we're dealing with the needs of offenders and offender 7 housing area. The agency has historically dealt with 8 that process, in my opinion, through that notification 9 to staff of requirements every year, in addition to 10 ensuring that we're meeting the necessary fire and 11 safety and health services requirements as we house 12 our offenders day in, day out in our institutions. 13 And there are surely policies that cover those 14 portions. An additional policy that deals with 15 specific temperature or specific initiatives or 16 mitigation efforts for offender housing areas would be 17 something that would look similar to information that 18 has been disseminated for many years, it would just be 19 codified in a policy -- more than likely, an existing 20 policy. 21 Q. Even after 2000 -- even after the summer of 22 2011 when at least ten people died of hyperthermia, 23 you're not aware of anyone circulating a draft policy 24 relating to indoor housing temperatures? 25 A. I have left the agency. There was</p>
<p style="text-align: right;">50</p> <p>1 cases, policies are modified in our current system to 2 cover the subject matter that would address most 3 issues, but there might be an occurrence where a new 4 policy for a new program or a new initiative would be 5 developed. 6 Q. Okay. Correct me if I've misunderstood 7 anything you said. Look, anybody can identify a need. 8 The proponents in the division, if they do so, they 9 can try to initiate a formal policy by drafting 10 something and then sending it on to the appropriate 11 levels. Is that fair? 12 A. That's fair. 13 Q. Okay. Would you agree with me that that 14 hasn't happened with regards to indoor housing 15 temperatures at TDCJ in any of its facilities? 16 A. As far as a specific policy referencing 17 indoor temperatures, the agency has relied on that 18 e-mail that we referenced earlier. There is not a 19 separate policy to address that issue. 20 Q. Okay. There easily could have been drafts 21 circulating around by any of the regional directors or 22 anyone up the food chain up through Director 23 Livingston if they wanted to. Right? 24 A. If a need was identified to develop that 25 policy, that surely could be initiated by a multitude</p>	<p style="text-align: right;">52</p> <p>1 discussion about the drafting of such policy, but I 2 can't speak to that since -- since I left in May. 3 Q. There was discussion in this year before you 4 left or prior to that? 5 A. This year before I left. 6 Q. Okay. Prior to this lawsuit being filed, 7 are you aware of any discussion relating to changing 8 policies with regards to indoor temperatures in the 9 housing areas? 10 A. Adopting a policy -- a -- modifying a policy 11 or changing a policy? You said, changing a policy. 12 Q. Either. Creating one? 13 A. I don't know of any conversation that took 14 place as it related to changing the method by which we 15 put out instructions for mitigating steps to take 16 during this seasonal period, so... 17 Q. You mentioned that if this were to occur, it 18 would go to the Executive Services Division? 19 A. Yes, sir. 20 Q. What is that? 21 A. That is a -- a division within the agency 22 that deals with the Emergency Action Center process, 23 it deals with policy development from the agency 24 perspective. Again, as I mentioned before, it deals 25 with dissemination of policies that -- across</p>

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<p style="text-align: right;">53</p> <p>1 divisional lines, so they would be the ultimate 2 drafters and producers of those policies. And also 3 serve as a function of research and collection of 4 statistical data for the agency. 5 Q. Would you be on that Executive Services 6 Division, or is that somebody else? 7 A. That's a different division. 8 Q. Who ran that division, do you know? And 9 I'm -- basically, '09 to the present, if you know? 10 A. That division -- the individuals in that 11 division would have reported to Jeff Baldwin. 12 Q. Jeff Baldwin. And who is Jeff Baldwin? I'm 13 sure I should know, but -- 14 A. Jeff Baldwin is chief of staff in the 15 agency. 16 Q. Chief of staff to Director Livingston? 17 A. Yes, sir. 18 Q. So would he be the best person to ask about 19 changing policies, modifying policies, creating 20 policies relating to indoor temperatures in the 21 housing areas? 22 A. As it relates to agency policy and ADs, that 23 falls under his purview, yes, sir. 24 Q. Okay. And he, again, reports directly to 25 Director Livingston?</p>	<p style="text-align: right;">55</p> <p>1 ever -- I mean, did you have personal conversations 2 with Director Livingston about the extreme heat inside 3 the Texas prison system, generally? 4 A. In general, particularly in -- as we went 5 into each seasonal year, we surely generated the 6 initial notification to all staff. There, I'm sure, 7 were conversations that we had as we were going into 8 each seasonal period where I would assure 9 Mr. Livingston that directions were put out to the 10 field and training was being conducted. As we had the 11 incidents occur in 2011, I would have surely discussed 12 with Mr. Livingston the subject matter of the 13 incidents that were occurring and steps that were 14 being taken to address the issue. 15 Q. Okay. So the individuals that died in -- 16 well, when did you take over your job as -- 17 A. 2009. 18 Q. 2009. Okay. So any offender death that was 19 linked to hyperthermia, you would have discussed that 20 with Director Livingston? 21 A. I can't say that I discussed specific 22 individual incidents with Mr. Livingston in all cases. 23 In some cases, the cause of death wasn't identified 24 until sometime after -- after the incident. But the 25 general subject matter about, as Health Services</p>
<p style="text-align: right;">54</p> <p>1 A. Yes, sir. 2 Q. They work hand in hand, to your knowledge? 3 A. As all division directors do, yes, sir. 4 Q. Did Mr. Stephens function kind of as your 5 chief of staff in a way? 6 A. I wouldn't say that. All three deputy 7 directors carried on different responsibilities and 8 covered different components of the Correctional 9 Institutions Division, so Mr. Stephens surely had his 10 portion of that. 11 Q. Each of them collectively functioned as 12 essentially a chief of staff for you? 13 A. Yes. 14 Q. Fair? 15 A. They reported -- I relied on them to -- to 16 bring issues to my attention that needed to be 17 addressed, yes, sir. 18 Q. Okay. When a policy is finally made, is 19 Director Livingston -- does it require his approval? 20 A. In -- there is different signatures, but in 21 most cases an administrative directive would be signed 22 by Mr. Livingston. There are some administrative 23 directives that would be signed by the executive 24 deputy director. 25 Q. Would he be involved at all in -- did you</p>	<p style="text-align: right;">56</p> <p>1 Division provided information that we were dealing 2 with deaths as a result of hyperthermia, the general 3 subject matter surely would have been discussed with 4 Mr. Livingston. 5 Q. Okay. And even before you discussed deaths 6 due to hyperthermia with Mr. Livingston, do you know 7 if he was knowledgeable about the dangers extreme heat 8 posed to inmates in the Texas prison system? 9 A. I can't speak for Mr. Livingston. 10 Q. Would you expect him to be knowledgeable 11 about the dangers of extreme heat in the Texas prison 12 system? 13 A. I would expect that Mr. Livingston is 14 knowledgeable about many things, but I can't speak to 15 what his knowledge level was in any particular area. 16 Q. Well, you train all of your officers, from 17 the lowest correctional officer up until yourself, 18 heading the Correctional Institutional Division -- 19 A. Right. 20 Q. -- about the dangers of extreme heat in the 21 prison system. Right? 22 A. Yes, sir. 23 Q. Wouldn't you expect the executive director 24 of the prison system to be equally knowledgeable about 25 those policies and problems?</p>

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<p style="text-align: right;">57</p> <p>1 A. I would assume that Mr. Livingston is 2 knowledgeable about policies within the agency, yes, 3 sir. 4 Q. Well, specifically, would you expect him to 5 be knowledgeable about the particular danger that 6 heat, extreme heat inside the prison system poses to 7 inmates? 8 MR. ANASTASIDIS: Objection. Asked and 9 answered, and also calls for speculation. 10 A. Again, I think I answered your question. I 11 can't speak to his knowledge. Again, generally, I 12 would say that Mr. Livingston is aware of most issues 13 within the agency and policies that are written to 14 address those issues. 15 Q. (BY MR. EDWARDS) Okay. Well, when you talk 16 to him about people dying due to -- of hyperthermia 17 due to indoor heat, was he surprised? 18 A. I surely don't think that -- particularly, 19 when we had the first discussion in 2011, that any of 20 us were anticipating or expecting any deaths to occur. 21 So I don't know if "surprise" is the right word, but 22 it surely was information that we had discussed that 23 we never had discussed before. 24 Q. Prior to 2011, you never talked about deaths 25 in the Texas prison system with -- with Director</p>	<p style="text-align: right;">59</p> <p>1 coming from staff in the field. 2 Q. Would it surprise you to learn that 3 correctional officers have, in fact, complained about 4 the intense heat at the Hutchins Unit? 5 A. It wouldn't surprise me that there are some 6 staff members that would complain about many 7 conditions, to include the environment they work in. 8 Q. Well, does the environment you work in, is 9 it 100 degrees on a consistent basis during the 10 summer? 11 A. The environment that I worked in? 12 Q. Yes. 13 A. For the most part, no, not during the 14 position that I held as director for the agency. 15 Q. Right. Your office was air conditioned. 16 Right? 17 A. Yes, it was. 18 Q. All of your senior staff's offices were air 19 conditioned. Right? 20 A. Yes, sir. 21 Q. All of your wardens' offices, including 22 Warden Pringle at the Hutchins Unit, their office is 23 air conditioned. Right? 24 A. Yes, sir. 25 Q. Your correctional officers and the inmates</p>
<p style="text-align: right;">58</p> <p>1 Livingston relating to heat? 2 A. No, sir, I did not. 3 Q. Okay. Were you aware that other people had 4 died in the Texas prison system due to heat-related 5 illness prior to 2009? 6 A. I cannot say that -- that I had direct 7 knowledge relating to any specific incident of a 8 heat-related illness death in the system prior to 9 2009. 10 Q. Well, were you aware that correctional 11 officers would routinely complain about the high heat 12 inside the prison? 13 A. I don't know that I would use the word 14 "routinely." I worked inside those systems for many 15 years myself, and surely conditions were uncomfortable 16 but not unbearable. 17 Q. Okay. Let me change it. Were you aware 18 that correctional officers throughout the prisons in 19 TDCJ system would complain about the heat and how hard 20 it was for them to work in that heat? 21 A. Again, I might have not answered your 22 question directly, but as it relates to formal 23 complaints rising to my level, individuals bringing 24 complaints from staff to my level, I cannot say that I 25 recall having specific conversations about complaints</p>	<p style="text-align: right;">60</p> <p>1 in the housing areas, they don't have that benefit. 2 Isn't that correct? 3 A. That is correct. For the most part, yes. 4 Q. Okay. And that's a choice that the agency 5 has made not to air condition those areas. Right? 6 A. There are some facilities that were not 7 constructed with air conditioning, yes, sir. 8 Q. And that's a choice that TDCJ is continuing 9 to make now. Isn't that correct? 10 A. TDCJ has not made the determination that it 11 is necessary to air condition all of the facilities in 12 our agency, yes, sir. 13 Q. In fact, TDCJ has done absolutely nothing 14 from 2009 to the present to cool the temperatures in 15 the housing areas that aren't air conditioned. Isn't 16 that correct? 17 A. That is -- I would disagree with that. 18 Q. Tell me why. 19 A. I disagree in the sense that to say that 20 TDCJ has done nothing to cool the housing area 21 environments, as we go into every year, we continue to 22 look at the environment as a whole. Facilities 23 Division is responsible for ensuring that ventilation 24 systems, exhaust systems, fans are operating 25 appropriately. Unit administrations are responsible</p>

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<p style="text-align: right;">61</p> <p>1 for evaluating housing areas, multi-purpose areas, for 2 the request of any additional fans that could be 3 placed in those areas to help with air flow. Again, 4 we take the steps that are outlined in the e-mail to 5 mitigate conditions within the housing areas. But, 6 again, to say that nothing has been done, I think, is 7 an inaccurate statement.</p> <p>8 Q. Okay. And I understand that you have put 9 out this e-mail and that steps are taken to mitigate 10 the effects of this intense heat that prisoners and, 11 frankly, guards experience. Right?</p> <p>12 A. We put out that e-mail to mitigate the 13 extreme temperatures, yes, sir.</p> <p>14 Q. Well, now, that's what I want to drill down 15 on. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. I am interested in you telling -- there is a 18 difference between mitigating the effects of super hot 19 conditions and actually eliminating the heat and 20 taking the temperature down. You would agree with me 21 on that. Right?</p> <p>22 A. I would agree.</p> <p>23 Q. You can bring a lot of ice water to someone 24 in a 115-degree environment. Right?</p> <p>25 A. Sure.</p>	<p style="text-align: right;">63</p> <p>1 in those precautions that actually reduce the 2 temperature inside the housing areas.</p> <p>3 A. Well, again, as I referenced earlier, the 4 only specific item covered in here is the appropriate 5 use of your air flow systems, your exhaust flow 6 systems to move any buildup of heat within those 7 housing areas outside those housing areas.</p> <p>8 Q. And I want to ask you about that.</p> <p>9 A. Okay.</p> <p>10 Q. We'll talk about the ventilation systems or 11 whatever. Anything other than ventilation systems in 12 this precaution which you would contend actually would 13 lower the temperature?</p> <p>14 A. No, sir.</p> <p>15 Q. Okay. Now, I want to make sure that we're 16 on the same page because my understanding is that 17 those ventilation systems effectively blow hot air. 18 Is that correct?</p> <p>19 A. Well, in some cases those exhaust systems 20 are blowing hot air out of the housing area, yes.</p> <p>21 Q. If it's a hundred degrees, the air they're 22 blowing in and out is effectively a hundred degrees. 23 Right?</p> <p>24 A. I don't know what the temperature would be, 25 but you could make that assumption.</p>
<p style="text-align: right;">62</p> <p>1 Q. But it doesn't change -- doesn't take the 2 temperature down to a safe level, does it?</p> <p>3 A. It would not -- ice water would not reduce 4 the temperature of the dormitory.</p> <p>5 Q. It might help a person be able to live in 6 that type of condition, but it doesn't do anything to 7 fix the actual condition of extreme heat. Fair?</p> <p>8 A. It -- ice water would not reduce the 9 temperature in dorms, I agree.</p> <p>10 Q. All right. Now, along those lines, I'm 11 handing you -- it's been previously marked, but we'll 12 mark it again as Exhibit 50. And that is, I believe, 13 the e-mail that is sent out consistently by you.</p> <p>14 (Deposition Exhibit No. 50 marked.)</p> <p>15 MR. EDWARDS: There you go Demetri.</p> <p>16 Sorry.</p> <p>17 MR. ANASTASIDIS: Thank you.</p> <p>18 Q. (BY MR. EDWARDS) And take as long as you'd 19 like, but would you agree with me that this is the 20 e-mail that has been basically sent out, at least from 21 '09 to the present, concerning these heat precautions?</p> <p>22 A. With some minor modifications in the 23 present, yes, it is.</p> <p>24 Q. Okay. Well, we'll talk about those. But 25 what I'm very interested in is, point me to anything</p>	<p style="text-align: right;">64</p> <p>1 Q. It's kind of like the difference between air 2 conditioning your car and a vent system in your car. 3 Right?</p> <p>4 A. Somewhat, yes.</p> <p>5 Q. Okay. Like, for instance, you're driving 6 from Huntsville to Austin in the dead of summer, there 7 is quite a difference between using air conditioning 8 in your automobile and not having air conditioning but 9 just putting the vent on. Right?</p> <p>10 A. That's correct.</p> <p>11 Q. One is -- cools the environment and lets you 12 live in the temperature that you can live in. Right?</p> <p>13 A. One is -- one would cool the environment, 14 the other would move the air.</p> <p>15 Q. Okay. Tell me what medically beneficial 16 effect you're aware of with regards to moving 17 extremely hot air around to your prison population, in 18 particular in the Hutchins Unit?</p> <p>19 MR. GARCIA: Objection, compound.</p> <p>20 Objection, speculation.</p> <p>21 Q. (BY MR. EDWARDS) Let me withdraw that.</p> <p>22 Tell me any benefit that you're aware 23 of that would take place at the Hutchins Unit from 24 moving hot air around through a ventilation system?</p> <p>25 MR. GARCIA: Objection, vague.</p>

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<p style="text-align: right;">65</p> <p>1 Objection, speculation.</p> <p>2 A. Well, again, the effects of the exhaust</p> <p>3 systems in all our housing areas and the fans that are</p> <p>4 available there in some cases, as I say, are there to</p> <p>5 move that hot air out of the particular housing area.</p> <p>6 But in other cases, those fans are there for the</p> <p>7 effects of the offender population. And, again,</p> <p>8 although it might not reduce the temperature, it</p> <p>9 allows for some comfort for those individuals that</p> <p>10 have the ability to access those fans.</p> <p>11 Q. Now, are you aware that the fans actually,</p> <p>12 because of the energy they use, actually increase the</p> <p>13 temperature?</p> <p>14 MR. GARCIA: Objection, speculation.</p> <p>15 MS. COOGAN: Join.</p> <p>16 A. I'm not aware of that.</p> <p>17 Q. (BY MR. EDWARDS) If that were the case,</p> <p>18 would that trouble from a policy making standpoint?</p> <p>19 MR. ANASTASIDIS: Objection. Rule --</p> <p>20 go ahead.</p> <p>21 MR. GARCIA: Speculation.</p> <p>22 MR. ANASTASIDIS: Objection, Rule 602.</p> <p>23 This witness has no personal knowledge.</p> <p>24 MS. COOGAN: Join.</p> <p>25 A. Again, I would hope that nothing would</p>	<p style="text-align: right;">67</p> <p>1 Correctional Institutions Division from '09 to 2012,</p> <p>2 isn't it your responsibility to know whether or not</p> <p>3 these fans are helping or hurting the inmates?</p> <p>4 A. I surely rely on the expertise of</p> <p>5 individuals in the field. And as we move into each</p> <p>6 seasonal period, we rely on the Facilities Division to</p> <p>7 help us address that issue. The Facilities Division</p> <p>8 puts extreme emphasis on ensuring that our ventilation</p> <p>9 and exhaust systems are functioning appropriately.</p> <p>10 From the CID's perspective, additional fans are</p> <p>11 purchased for the comfort of offenders in those</p> <p>12 particular areas each year and distributed as</p> <p>13 requested by unit administrations due to need.</p> <p>14 Q. Is it your understanding, based on talking</p> <p>15 to these people, that the hot air is blown out of the</p> <p>16 housing area?</p> <p>17 A. Yes, sir.</p> <p>18 Q. If that's incorrect, where -- well, where</p> <p>19 did you get that belief?</p> <p>20 A. Again, that's --</p> <p>21 Q. Facilities Division?</p> <p>22 A. -- in general conversations with the</p> <p>23 Facilities Division.</p> <p>24 Q. Okay. Who in particular?</p> <p>25 A. Specifically, I -- I can't say. That has</p>
<p style="text-align: right;">66</p> <p>1 increase the temperature in those dorms, but I have no</p> <p>2 knowledge of whether that would happen or not.</p> <p>3 Q. (BY MR. EDWARDS) Well, have you asked</p> <p>4 anybody if the fans actually reduce the temperature or</p> <p>5 provide some benefit?</p> <p>6 A. I specifically have -- from the Facilities</p> <p>7 Division guidance and consulting with the</p> <p>8 Facilities Division as we go into every year, it's</p> <p>9 their, I would assume in this case, expert opinion</p> <p>10 that they serve that purpose of dispensing that hot</p> <p>11 air from the dormitories. Specifically have I asked</p> <p>12 that question? I can't say that I have.</p> <p>13 Q. Okay. But as the former head of the</p> <p>14 criminal institution division, at least from '09 until</p> <p>15 early this year, I mean, did anyone ever talk to you</p> <p>16 about why these fans are there -- well, strike that.</p> <p>17 As the head of the Criminal</p> <p>18 Institutions Division from '09 to at least the --</p> <p>19 almost the present, or slightly -- whenever you</p> <p>20 retired --</p> <p>21 MR. ANASTASIDIS: Correctional</p> <p>22 Institution, not Criminal Institution.</p> <p>23 MR. EDWARDS: I apologize. Let me</p> <p>24 restate that. That's a Freudian slip, I suppose.</p> <p>25 Q. (BY MR. EDWARDS) As the head of the</p>	<p style="text-align: right;">68</p> <p>1 been a -- a recommendation by the Facilities Division</p> <p>2 as long as I have been at our institutions.</p> <p>3 Q. Is that Mr. Vian?</p> <p>4 A. Mr. Vian is currently deputy director over</p> <p>5 that area and he plays some role in oversight. But of</p> <p>6 the facilities staff that is on at every facility</p> <p>7 that's responsible for maintenance functioning and</p> <p>8 ventilation systems in our housing areas.</p> <p>9 Q. Anyone with any medical background advising</p> <p>10 you about whether or not these fans are -- are</p> <p>11 beneficial in moving hot air out of the dorm?</p> <p>12 A. I don't know of anybody from the Health</p> <p>13 Services Division that has given me input relating to</p> <p>14 exhaust systems and their functioning in a housing</p> <p>15 area.</p> <p>16 Q. Well, is the purpose of these fans to --</p> <p>17 well, so you've never in a conversation with anyone</p> <p>18 from the Health Services Division of TDCJ as to</p> <p>19 whether or not these fans are actually beneficial from</p> <p>20 a medical standpoint?</p> <p>21 A. I think as it -- and, again, depending on --</p> <p>22 are we talking about the exhausting fans or are we</p> <p>23 talking about the floor fans that are put in, or</p> <p>24 either?</p> <p>25 Q. Either?</p>

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<p style="text-align: right;">69</p> <p>1 A. Again, floor fans help circulate the air. 2 Again, more for comfort level. Exhaust fans, it would 3 be my premise from Facilities Division instruction 4 that they help expel hot air from the dormitories. 5 Health services staff discussions have -- have, to my 6 recollection, not involved discussions about fans 7 themselves, more so the appropriate steps to take to 8 address any offender issues. 9 Q. Okay. This expelling of hot air, it gets 10 replaced with what kind of air? 11 A. Again, as was mentioned earlier, there is -- 12 the intake fans bring in air from the outside. It's 13 not cooled, so there is not cool air flowing into the 14 housing areas. 15 Q. Now, if one of the problems is that people 16 with certain medical conditions cannot cool their 17 bodies, would you agree with me that fans are 18 worthless as a means to protect them from this? 19 A. I don't know that I have the medical 20 expertise to say that they're worthless. 21 Q. Well, if they were worthless, that would be 22 a problem. Right? 23 MR. ANASTASIDIS: Objection. Calls for 24 the witness to speculate. 25 A. Again, it's not my belief that they are</p>	<p style="text-align: right;">71</p> <p>1 those answers. And, again, as it relates to fans, 2 most of my information has flowed from the 3 Facilities Division, not from the Medical Division. 4 Q. Ever had a conversation with anyone from 5 UTMB about these exhaust fans? 6 A. Not that I can recall. 7 Q. Ever had a conversation with anyone from 8 UTMB about, how can we lower the temperature to make 9 it safe for these prisoners? 10 A. There have surely been conversations with 11 Health Division staff relating to conditions within 12 the housing areas and steps that -- steps that should 13 be taken to help mitigate that heat. 14 Q. Okay. When you say Health Services 15 Division, just so I'm clear, you're talking about the 16 Texas Department of Criminal Justice Health Services 17 Division. Correct? 18 A. Yes, sir, I am. 19 Q. Okay. Is Doctor Linsicum involved in that? 20 A. Doctor Linthicum. Yes, sir. 21 Q. Linthicum. Excuse me. 22 Did she give you any suggestions about 23 how to lower these temperatures which are dangerous? 24 A. Again, Doctor Linthicum has discussed this 25 issue, and extensively, as we go into every seasonal</p>
<p style="text-align: right;">70</p> <p>1 worthless. 2 Q. (BY MR. EDWARDS) Based on what? 3 A. Based on, again, the ability to generate air 4 flow within the dorms and provide for some comfort 5 level for the offenders. 6 Q. Okay. Is that just based on your personal 7 experience? 8 A. Personal experience and -- and, again, those 9 conversations that I've had with facilities staff. 10 Q. Can you tell me any particular individual in 11 the facilities staff who has told you that these fans 12 can somehow help a body cool? 13 A. Not -- no. 14 Q. Okay. Have you ever had a conversation with 15 anyone with any medical background as to whether or 16 not these fans can help a body cool or a person 17 acclimate to an extremely high temperature? 18 A. Again, there might have been a conversation, 19 but I do not recall. 20 Q. Okay. Would you agree with me that it's 21 pretty important for the person in charge of the 22 overall prison system, at least the Correctional 23 Institutions Division, for them to know these answers? 24 A. I think it would be important to talk to the 25 experts in the field that -- that are -- that can give</p>	<p style="text-align: right;">72</p> <p>1 period, she works closely with contracted health 2 service staff to ensure that appropriate measures are 3 being taken on the facilities to deal with any issues 4 and appropriately house offenders on our facilities. 5 Doctor Linthicum and I have had a multitude of 6 discussions about ensuring that water is available for 7 these offenders. I cannot say that -- I would be 8 assuming there might have been a conversation about 9 fans, but I don't want to assume that we had that 10 conversation. 11 Q. Okay. As you testify here today, other than 12 making sure that water is available to inmates, can 13 you think of any other conversations you had with 14 Doctor Linthicum or anybody from the Health Services 15 Division about lowering the temperatures or mitigating 16 the heat in particular units? 17 A. Sure. As it relates to the overall factor 18 of mitigating the heat, again, those conversations 19 have been more comprehensive about how we deal with 20 the individuals that in some cases might be more 21 susceptible to heat-related illness. 22 Q. Like who? 23 A. As some of those factors that were named 24 earlier, if there is a medical condition or an 25 individual is on medication that the Health Services</p>

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<p style="text-align: right;">73</p> <p>1 Division as identified might be more susceptible to 2 heat-related illness, there is a variety of that 3 criteria that they use. 4 Q. Sure. 5 A. Then we've talked about ensuring that staff 6 in the field is aware of those individuals so that we 7 can ensure that those mitigation efforts that we have 8 put out there are taking place, and that if an 9 individual is suffering from any heat-related illness 10 that is identified appropriately so that individual 11 can get immediate health service care. 12 Q. Heat stroke is a medical emergency. Right? 13 A. Yes, sir. 14 Q. It requires immediate care. Correct? 15 A. Yes, sir. 16 Q. From a doctor or a medical provider, not 17 from like a supervisor or a lieutenant or sergeant. 18 Correct? 19 A. I would say that that's surely a situation 20 that requires attention by a health service 21 professional. 22 Q. You would expect all of your correctional 23 officers to know that, certainly, during the period 24 2009 until the present. Correct? 25 A. Yes, sir.</p>	<p style="text-align: right;">75</p> <p>1 Q. Yeah. 2 A. Okay. I think it runs approximately 3 \$3 billion. 4 Q. Okay. Would you agree with me that, like, 5 one way you could just remedy this problem of people 6 with certain medical conditions experiencing heat 7 stroke due to really high temperatures is to just get 8 the temperature to a safe level through using cooling? 9 A. Well, again, there are -- if -- taking your 10 presumptive question, if you were to reduce the 11 temperature in all housing areas in the Texas 12 Department of Criminal Justice, then the temperature 13 in the dormitory would surely be more livable, more 14 comfortable for the offender population. 15 Q. Well, I'm not really concerned about comfort 16 right now. I'm really concerned about the livable 17 part. So let me ask you, of the employees that are 18 working in the air conditioned environments of all of 19 the facilities in the Texas Department of Criminal 20 Justice, are you aware of anybody dying from heat 21 stroke? 22 A. Not to my knowledge, no, sir. 23 Q. Okay. Now, but you are aware of a lot of 24 people dying of heat stroke who are living in the 25 inside housing areas, inmates. Right?</p>
<p style="text-align: right;">74</p> <p>1 Q. You would expect any human being to know 2 that. Right? 3 A. I don't know if I would go that broad on any 4 human being, but -- 5 Q. Fair enough. Any human being with any job 6 where they're responsible for taking care of people, 7 you would expect them to know that when they come upon 8 someone suffering a heat stroke, that that's a medical 9 emergency and they've got to get immediate medical 10 care. Fair? 11 A. I would say, if they have identified an 12 individual suffering from heat stroke, they should 13 know to get him medical care -- immediate medical 14 care. 15 Q. Well, even if they don't know it's 16 absolutely a heat stroke, if they see somebody 17 convulsing and nonresponsive and unable to have an 18 conversation for an extended period of time, then 19 that's an emergency that needs care. Right? 20 A. I would surely say that should involve 21 contact with health service professionals, yes, sir. 22 Q. Okay. What is the budget for the Texas 23 Department of Criminal Justice? At least, let's say, 24 give or take, in 2013? 25 A. The entire budget?</p>	<p style="text-align: right;">76</p> <p>1 A. I'm aware of some incidents, particularly in 2 2011, where hypothermia was determined to be the cause 3 of death, yes, sir. 4 Q. Not just 2011, 2012. Right? 5 A. There are a couple of instances in 2012, 6 yes, sir. 7 Q. And I assume you would agree with me that a 8 couple of incidents in 2012 is a couple of incidents 9 too many. Right? 10 A. I would agree. 11 Q. And I assume you would agree with me that 12 ten incidents in 2011 is off the charts too many. 13 Right? 14 A. I would agree that any number is too many. 15 Q. Okay. Because this is not a problem that 16 can't be fixed. Right? This is a problem that can be 17 fixed? 18 MR. GARCIA: Objection. Is there a 19 question in there? 20 Q. (BY MR. EDWARDS) Isn't this a problem that 21 can be fixed by lowering the temperature and 22 eliminating the potential for extreme heat to cause 23 heat stroke? 24 MR. GARCIA: Objection, compound 25 question. Objection, speculation.</p>

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<p style="text-align: right;">77</p> <p>1 MS. COOGAN: And vague. By whom?</p> <p>2 A. Again, we have safely housed individuals in</p> <p>3 our institutions for many years. There surely is a --</p> <p>4 an environment where temperatures are not controlled,</p> <p>5 and portions of our populations do live in those</p> <p>6 environments. It's been our practice to ensure that</p> <p>7 appropriate steps are taken to mitigate the heat in</p> <p>8 those particular circumstances, and that offenders are</p> <p>9 appropriately housed in accordance with their health</p> <p>10 service needs, so...</p> <p>11 Q. (BY MR. EDWARDS) I appreciate that, sir,</p> <p>12 and I don't mean to be rude --</p> <p>13 MR. EDWARDS: But I'm going to object</p> <p>14 as nonresponsive.</p> <p>15 Q. (BY MR. EDWARDS) Did you safe -- did the</p> <p>16 Texas Department of Criminal Justice safely house</p> <p>17 Larry Gene McCollum?</p> <p>18 MR. ANASTASIDIS: Objection, vague and</p> <p>19 calls for speculation.</p> <p>20 A. I don't know what you mean by safely house,</p> <p>21 but I will respond to that question of, Mr. McCollum</p> <p>22 suffered from a heat-related illness. The autopsy</p> <p>23 indicated that it was from hyperthermia, so the living</p> <p>24 conditions were a partial causal factor of his death.</p> <p>25 Q. (BY MR. EDWARDS) Did you review his</p>	<p style="text-align: right;">79</p> <p>1 broad question about, was he properly housed at --</p> <p>2 Q. Let me stop you. I didn't ask you if he was</p> <p>3 properly housed. I asked you if he was safely housed.</p> <p>4 A. Oh.</p> <p>5 Q. Does that change your answer?</p> <p>6 A. Well, again, I don't know if it -- if it</p> <p>7 changes my answer, but, again, I feel that in his</p> <p>8 particular case, the environmental conditions caused</p> <p>9 his death, so -- or were a contributing factor to his</p> <p>10 death, so he should have been housed otherwise.</p> <p>11 Q. In an air conditioned environment. Right?</p> <p>12 A. I can't make that determination. It would</p> <p>13 be Health Services.</p> <p>14 Q. Okay. A \$120,000 expenditure, do you</p> <p>15 consider that a significant and expensive expenditure</p> <p>16 in the context of a \$3 billion budget?</p> <p>17 MR. GARCIA: Objection, speculation.</p> <p>18 A. Again, a \$120,000 expenditure is -- in</p> <p>19 comparison to \$3 billion is fairly small, but within a</p> <p>20 particular degree of that \$3 billion could be a</p> <p>21 substantial portion.</p> <p>22 Q. (BY MR. EDWARDS) Sure. And I asked you a</p> <p>23 pretty broad question.</p> <p>24 A. Right.</p> <p>25 Q. In order to effectuate a change that would</p>
<p style="text-align: right;">78</p> <p>1 autopsy?</p> <p>2 A. Yes, sir.</p> <p>3 Q. His autopsy actually said it was due to lack</p> <p>4 of air conditioning in the prison. Correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. So let me ask you again. In your</p> <p>7 opinion, as the director of the Correctional</p> <p>8 Institutions Division, did the Texas Department of</p> <p>9 Criminal Justice and the Hutchins facility, in</p> <p>10 particular, safely house Larry Gene McCollum?</p> <p>11 A. Again, those housing criteria are based on</p> <p>12 the evaluation of that individual's medical condition</p> <p>13 upon arrival. In this particular case, because he</p> <p>14 suffered from heat-related illness, that again is a</p> <p>15 causal factor of his death, so...</p> <p>16 Q. So did you safely house him or not?</p> <p>17 A. Well, again, in this particular case, I</p> <p>18 believe I -- I believe I answered the question. He</p> <p>19 was housed in that time in accordance with his known</p> <p>20 medical criteria. We surely -- surely did not</p> <p>21 identify, in my opinion, an opportunity to -- to deal</p> <p>22 with his medical issue.</p> <p>23 Q. What does that mean? What do you mean when</p> <p>24 you say that?</p> <p>25 A. Well, again, I -- I would again rely on the</p>	<p style="text-align: right;">80</p> <p>1 cost \$120,000, what would need to happen? Could that</p> <p>2 be done by the warden level, would that require</p> <p>3 regional director's approval, would that require your</p> <p>4 approval, sir, or would it require even more sets of</p> <p>5 approval? A facilities expense of that kind?</p> <p>6 A. Facility --</p> <p>7 MR. GARCIA: Objection, compound.</p> <p>8 MS. COOGAN: And vague.</p> <p>9 A. There are specific work requests that can be</p> <p>10 generated within our agency contingent on the dollar</p> <p>11 amount that determines the approval level for that</p> <p>12 particular expenditure. So a major work request at</p> <p>13 \$120,000 level, I believe, would -- would surely go</p> <p>14 through whatever divisional component was responsible</p> <p>15 for it, up through that division director to the</p> <p>16 Facilities Division for -- for approval. Ultimately,</p> <p>17 if it was a long term or a -- a major work request, it</p> <p>18 ultimately could go to the facilities review board for</p> <p>19 approval.</p> <p>20 Q. (BY MR. EDWARDS) Okay. So what I'm trying</p> <p>21 to get -- I mean, and I am going to have to reask it</p> <p>22 because there were some objections, and I apologize.</p> <p>23 But major work requests, would putting</p> <p>24 in air conditioning be considered a major work</p> <p>25 request?</p>

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<p style="text-align: right;">81</p> <p>1 A. Yes, it would.</p> <p>2 Q. Okay. A major work request that costs,</p> <p>3 let's say, for instance, \$120,000, what level of</p> <p>4 approval would be necessary to make that happen?</p> <p>5 MS. COOGAN: Objection, incomplete</p> <p>6 hypothetical.</p> <p>7 A. Again, I believe I answered the question.</p> <p>8 It would go through the division director level, it</p> <p>9 would go through Facilities Division and on to the</p> <p>10 facilities review board.</p> <p>11 Q. (BY MR. EDWARDS) And, again, just so I</p> <p>12 understand. Mr. Vian would be the Facilities Division</p> <p>13 director?</p> <p>14 A. Mr. Inmon, Frank Inmon is the</p> <p>15 Facilities Division director. Mr. Vian is the deputy</p> <p>16 director.</p> <p>17 Q. Okay. The division director, is that the --</p> <p>18 is that the six regional director positions?</p> <p>19 A. No. That would be -- if it dealt with a</p> <p>20 particular facility, it would be generated on the unit</p> <p>21 level, pass up through your regional director level,</p> <p>22 your regional Facilities Division level, it would come</p> <p>23 through the deputy director level within CID and to</p> <p>24 me. If it dealt with a particular program area on the</p> <p>25 facility, then it would go through that particular</p>	<p style="text-align: right;">83</p> <p>1 the information, sign off on it. It would go to</p> <p>2 the -- a regional director in that particular region.</p> <p>3 From there it would go to, in most cases,</p> <p>4 Mr. Stephens, who would review it. And subsequently</p> <p>5 it would come to me, and then it would be forwarded to</p> <p>6 the Facilities Division for final processing. And</p> <p>7 they would make the determination as to whether or not</p> <p>8 it's a -- something that would have to be designed.</p> <p>9 And then, ultimately, if the project</p> <p>10 was to move forward, it would go to a facilities</p> <p>11 review board process where that review board would get</p> <p>12 together and approve the funding for it.</p> <p>13 Q. And is there -- okay. Let's say it cost</p> <p>14 \$250,000, would the process be different?</p> <p>15 A. The process would still be the same.</p> <p>16 Q. Let's say it cost a million dollars, would</p> <p>17 the process be different?</p> <p>18 A. It would be different as it relates to the</p> <p>19 approval level. At some point in time that approval</p> <p>20 level would ratchet up and ultimately would have to go</p> <p>21 to the Board of Corrections for approval before that</p> <p>22 project could move forward.</p> <p>23 Q. Tell me at what level you need the Board of</p> <p>24 Corrections to be involved, what monetary level? I</p> <p>25 hope I'm making myself clear.</p>
<p style="text-align: right;">82</p> <p>1 divisional director.</p> <p>2 Q. All right. Well, let me ask it this way.</p> <p>3 Let's say that there was a decision made to air</p> <p>4 condition, you know, a housing -- one of the housing</p> <p>5 areas at the Hutchins Unit.</p> <p>6 A. Okay.</p> <p>7 Q. And let's say hypothetically that it cost</p> <p>8 \$120,000.</p> <p>9 A. Right.</p> <p>10 Q. Okay. Who would need to be involved in that</p> <p>11 decision in order to make that happen? Could you make</p> <p>12 that happen, or would it take more than that?</p> <p>13 A. It would take more than that for the</p> <p>14 expenditures to be expended, yes, sir.</p> <p>15 Q. I'm trying to -- who exactly would have to</p> <p>16 be involved? How would this process have to start?</p> <p>17 A. Just as I mentioned, the process would start</p> <p>18 out on the unit level. The warden, the unit</p> <p>19 administrator would identify that request and initiate</p> <p>20 it. It would go to the unit maintenance supervisor.</p> <p>21 It would basically include the data relating to a cost</p> <p>22 estimate, equipment necessary, in some cases,</p> <p>23 materials required. It would then go to the regional</p> <p>24 maintenance supervisor who would, again, review the</p> <p>25 facilities, maintenance supervisor on the unit levels,</p>	<p style="text-align: right;">84</p> <p>1 A. I believe it's a million dollars. I believe</p> <p>2 it's a million dollars.</p> <p>3 Q. As -- anything under a million dollars,</p> <p>4 Director Livingston, yourself, the</p> <p>5 Facilities Division, you guys have the power to make</p> <p>6 that happen without Board approval?</p> <p>7 MS. COOGAN: Objection. Incomplete</p> <p>8 hypothetical.</p> <p>9 Q. (BY MR. EDWARDS) Is that true?</p> <p>10 MS. COOGAN: Objection. Incomplete</p> <p>11 hypothetical.</p> <p>12 A. I believe so.</p> <p>13 Q. (BY MR. EDWARDS) All right. And somewhat</p> <p>14 above a million dollars, you believe the board -- the</p> <p>15 Board of Corrections would need to approve that.</p> <p>16 Correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Other than the extra step of Board of</p> <p>19 Corrections approval, assuming that we're above the</p> <p>20 million dollar mark, are there any other steps that</p> <p>21 need to happen at the -- at the below-board approval</p> <p>22 for a million dollar-plus expenditure?</p> <p>23 A. When you say "other steps," are you talking</p> <p>24 about steps within the divisions or approval --</p> <p>25 Q. You rolled through kind of like how the</p>

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<p style="text-align: right;">85</p> <p>1 process normally would go.</p> <p>2 A. Right.</p> <p>3 Q. And what I'm trying to think -- and you've</p> <p>4 told me that for expenditures under a million dollars.</p> <p>5 A. Right.</p> <p>6 Q. And I've got that, I think.</p> <p>7 A. Right.</p> <p>8 Q. And now you've added an extra step, look, if</p> <p>9 it's greater than a million dollars, we've got to get</p> <p>10 the Board of Corrections to approval it.</p> <p>11 A. Right.</p> <p>12 Q. And what I'm trying to think -- is it just,</p> <p>13 you go through the same steps, and then you have an</p> <p>14 extra step, which is, you take it to the board and</p> <p>15 Director Livingston would present it to the board and</p> <p>16 they would say yea or nay. Is that your</p> <p>17 understanding?</p> <p>18 A. Basically, it's presented to the board, yes,</p> <p>19 sir.</p> <p>20 Q. Okay. Now, are you aware, during your time</p> <p>21 as the head of the Correctional Institutions Division,</p> <p>22 of anybody saying, look, we need to air condition the</p> <p>23 Hutchins Unit?</p> <p>24 A. No, sir.</p> <p>25 Q. Anybody ever say, look, we need to air</p>	<p style="text-align: right;">87</p> <p>1 Right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Because I've read the newspaper</p> <p>4 articles where the spokesperson for the Texas</p> <p>5 Department of Criminal Justice is talking about that</p> <p>6 it might cost \$50 million. Are you aware of any study</p> <p>7 anywhere that the Texas Department of Criminal Justice</p> <p>8 commissioned or even is aware of supporting that</p> <p>9 number?</p> <p>10 A. I don't know of any study, no, sir.</p> <p>11 Q. Okay. Assuming that the newspapers are</p> <p>12 correct and that the expenditure relating to cooling</p> <p>13 for the pigs was \$750,000, as I understand your</p> <p>14 testimony, that would not have required board -- the</p> <p>15 Board of Corrections approval, that would have been</p> <p>16 below that. Correct?</p> <p>17 A. Again, that's -- that's to my knowledge.</p> <p>18 Q. Okay. I mean, if it turned out that you</p> <p>19 could air condition a substantial portion of the</p> <p>20 Hutchins facility housing area for under a million</p> <p>21 dollars, would you support doing that?</p> <p>22 A. Well, again, as I stated earlier, in</p> <p>23 discussions with the individuals responsible for</p> <p>24 overseeing the institutions, along with me the other</p> <p>25 division directors, particularly after the incidents</p>
<p style="text-align: right;">86</p> <p>1 condition just a couple of housing dorms at the</p> <p>2 Hutchins Unit. It's too hot for these people with</p> <p>3 heat-sensitive illnesses. Anybody ever say that to</p> <p>4 you?</p> <p>5 A. No, sir.</p> <p>6 Q. Did anything prevent you from saying that to</p> <p>7 other people?</p> <p>8 A. No, sir.</p> <p>9 Q. Are you aware of any cost study being done</p> <p>10 about the cost of air conditioning -- let's start with</p> <p>11 the Hutchins Unit?</p> <p>12 A. No, sir.</p> <p>13 Q. Are you aware of any studies being done with</p> <p>14 regards to air conditioning any of the prison units,</p> <p>15 the housing areas?</p> <p>16 A. Not to my knowledge, no, sir.</p> <p>17 Q. And you're, you know, pretty high up in the</p> <p>18 food chain with the Texas Department of Criminal</p> <p>19 Justice. Right?</p> <p>20 A. Not any longer, no, sir.</p> <p>21 Q. Fair enough. You certainly were, though,</p> <p>22 weren't you?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. You would expect to be made aware of</p> <p>25 if there are these discussions going on internally.</p>	<p style="text-align: right;">88</p> <p>1 that we had in 2011, those discussions with the</p> <p>2 Administrative Risk Management Division, the</p> <p>3 Facilities Division, and the Health Services Division</p> <p>4 director, our discussions focused on what efforts do</p> <p>5 we need to initiate to ensure that we don't have any</p> <p>6 future incidents and mitigate the opportunities for</p> <p>7 future incidents related to heat-related illnesses and</p> <p>8 heat-related deaths.</p> <p>9 And as we focused our efforts on that</p> <p>10 and reviewed those incidents, we focused on what we</p> <p>11 thought would continue to address that issue, and look</p> <p>12 at any areas where we felt that there was room for</p> <p>13 improvement. And so, through that determination, we</p> <p>14 felt that we could continue to safely house offenders</p> <p>15 in our populations, short of air conditioning all of</p> <p>16 our facilities, by, again, ensuring that we were</p> <p>17 reconcentrating our efforts on mitigating the</p> <p>18 situations in the dorms and ensuring that individuals</p> <p>19 that were housed in our facilities were housed in</p> <p>20 accordance with their needs, security and health</p> <p>21 service needs, ensuring that we were not just relying</p> <p>22 any longer on individual offenders to bring forth an</p> <p>23 issue, particularly those offenders that we felt were</p> <p>24 more susceptible potentially to any heat-related</p> <p>25 illness. And that is when the discussion between</p>

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<p style="text-align: right;">89</p> <p>1 health services and myself determined that we would 2 create our wellness checklist system. So that we also 3 just did not rely on staff routinely walking through 4 the dorms making a general observation of all 5 offenders, that they dedicate their time and effort to 6 ensuring that we were checking on these individuals 7 that might be more susceptible to heat-related 8 illnesses. And that we also reemphasized our focus on 9 the job that we were responsible for, and any time 10 that you send out a list or you label particular 11 individuals and say, look at these, we want to be 12 careful to make sure that staff didn't assume they 13 didn't have to look at anybody else. So we also 14 ensured that as we move forward and discuss those 15 issues, we left in place the need to ensure we were 16 checking on the entirety of the population, but 17 focused our effort on ensuring that, should any 18 individual be in a situation that required health 19 service care, that we were identifying that 20 immediately and getting those individuals appropriate 21 care.</p> <p>22 Again, with that being said, it was 23 through those discussions that we felt that we could 24 continue to do that, as we have done for many years, 25 short of air conditioning our facilities.</p>	<p style="text-align: right;">91</p> <p>1 mean -- well, what if it only cost \$150,000, would you 2 change your mind? 3 MS. COOGAN: Same objection. 4 A. Again, I mean, I don't know that cost is -- 5 cost is a driving force here. I mean, if -- if the 6 determination was made through consensus of staff at 7 the Texas Department of Criminal Justice that the only 8 way we felt we could safely house our offenders was 9 through air conditioning our facilities, then that's 10 the decision that would have been made and that's the 11 direction we would have moved forward no matter what 12 the funding cost was. 13 Q. (BY MR. EDWARDS) I just want to make 14 certain I understand you. Whether it costs \$100,000 15 or \$25 million, the position that you would advocate 16 is, if it's necessary to protect our offenders from 17 death by heat stroke, we ought to do it, if it's 18 necessary? 19 A. If it's necessary. 20 Q. Okay. Now, do you think that the Texas 21 Department of Criminal Justice and, in particular, the 22 region in which Director Eason supervised during 23 the -- let's say, 2010, 2011, 2012 time period, did a 24 wonderful job protecting inmates from the dangers of 25 extreme heat?</p>
<p style="text-align: right;">90</p> <p>1 MR. EDWARDS: Okay. Let me object as 2 nonresponsive. 3 Q. (BY MR. EDWARDS) But I appreciate your 4 answer. 5 Again, let me ask you again, if it -- 6 if there were data to say that you could air condition 7 a significant portion of the housing units at the 8 Hutchins Unit for under a million dollars, would you 9 be in favor of doing that and air conditioning those 10 areas? 11 A. Again -- 12 Q. That's a yes or no. 13 A. Okay. If that's my only options, with no 14 other information, then I would have to say, no. 15 Q. Even though that's the only way you can be 16 sure to eliminate the risk of heat stroke. Correct? 17 MS. COOGAN: Objection. Incomplete 18 hypothetical question. 19 MR. ANASTASIDIS: Calls for 20 speculation. 21 A. And, again, I -- I would be making that 22 assumption, but I believe that there is a -- an 23 opportunity to safely house offenders short of air 24 conditioning facilities. 25 Q. (BY MR. EDWARDS) Okay. So then you're -- I</p>	<p style="text-align: right;">92</p> <p>1 A. Well, again, as was mentioned earlier, any 2 time we have one incident or one death relating to any 3 subject matter, in this case, heat-related illness, I 4 would say as an agency as a whole, we need to evaluate 5 those circumstances and, again, make sure we're 6 meeting the needs of the offenders in our population. 7 So to select a region, any time we had a -- a death in 8 our facilities, I consider that a -- an issue and, in 9 some cases, a failure of -- of our -- some system that 10 surely has to be evaluated and ensure that we're doing 11 everything we can. In some cases, those deaths are 12 unforeseen and in some cases, unpreventable. In other 13 cases, there are surely issues through our processes 14 as we review our policies that we didn't -- did or did 15 not follow that would have allowed us to do a better 16 job of meeting our responsibilities. 17 Q. Mr. McCollum's death was preventable, wasn't 18 it? 19 MR. GARCIA: Objection. Speculation. 20 MS. COOGAN: Join. 21 A. Again, I'm not -- that does call for 22 speculation, but I -- I... 23 Q. (BY MR. EDWARDS) He died of hyperthermia, 24 at least according to the autopsy, due to a lack of 25 air conditioning.</p>

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<p style="text-align: right;">93</p> <p>1 A. Right.</p> <p>2 Q. Do you think that TDCJ could have prevented</p> <p>3 that by placing him in an environment that had air</p> <p>4 conditioning?</p> <p>5 MR. ANASTASIDIS: Objection. This</p> <p>6 witness is not qualified to give a medical opinion.</p> <p>7 MR. EDWARDS: I'm not asking for a</p> <p>8 medical opinion.</p> <p>9 A. Again, I would say that he was housed in</p> <p>10 accordance with -- with his health service criteria at</p> <p>11 the time. In hindsight, I can't tell you what health</p> <p>12 service would have -- would have -- how health</p> <p>13 services would have evaluated his condition and</p> <p>14 whether or not he needed to be relocated to another</p> <p>15 facility or a different institution due to his</p> <p>16 condition.</p> <p>17 Q. As I understand your testimony, one death</p> <p>18 from heat stroke is too many in the entire prison</p> <p>19 system. Is that correct?</p> <p>20 A. Any death in our system is -- is something</p> <p>21 that we take seriously and surely work to make it</p> <p>22 preventable.</p> <p>23 Q. Okay. That's your goal. Right? That you</p> <p>24 take these deaths seriously and you work to prevent</p> <p>25 them. Right? That's the goal. That's what you</p>	<p style="text-align: right;">95</p> <p>1 Department of Criminal Justice, at least was it your</p> <p>2 position, that it required a death before you examined</p> <p>3 whether or not the extreme heat was posing a danger to</p> <p>4 inmates?</p> <p>5 A. No. We address that issue going into it.</p> <p>6 Q. Of course not. Right?</p> <p>7 A. We address that issue going into every</p> <p>8 season.</p> <p>9 Q. Well, okay. But you had a number of</p> <p>10 heat-related illnesses before Mr. McCollum died in the</p> <p>11 summer of 2011, didn't you?</p> <p>12 A. There were heat-related illnesses, yes, sir.</p> <p>13 Q. Employee heat-related illnesses and inmate</p> <p>14 heat-related illnesses. Right?</p> <p>15 A. There were some, yes, sir.</p> <p>16 Q. Okay. Does it require a death before you</p> <p>17 take precautions and change these measures that you</p> <p>18 allege mitigate the heat?</p> <p>19 A. No.</p> <p>20 Q. It certainly shouldn't. Right?</p> <p>21 A. No, sir.</p> <p>22 Q. If people are suffering heat exhaustion,</p> <p>23 complaining of heat, fainting, whatever, you ought to</p> <p>24 examine that right away. Right?</p> <p>25 MR. GARCIA: Objection. Compound.</p>
<p style="text-align: right;">94</p> <p>1 should be doing. Fair?</p> <p>2 A. Right.</p> <p>3 Q. Did you do that in 2011, in the summer of</p> <p>4 2011, did you do everything possible to stop these</p> <p>5 deaths by heat stroke in the summer of 2011?</p> <p>6 A. I think that moving into the summer of 2011,</p> <p>7 every reasonable step was taken to address those</p> <p>8 issues. Those reasonable steps had been in place for</p> <p>9 our -- for many years, and provide for that safe</p> <p>10 environment for the offender population. In 2011,</p> <p>11 there surely was a need to re-evaluate our processes</p> <p>12 and make appropriate adjustments.</p> <p>13 Q. Did it require ten people to die before you</p> <p>14 started re-evaluating?</p> <p>15 MR. GARCIA: Objection. Argumentative.</p> <p>16 A. Again, any time we had a death, once the</p> <p>17 issue arose in 2011, we immediately began looking at</p> <p>18 the issue. Those deaths occurred in a very short</p> <p>19 period of time over a -- a course of less than a</p> <p>20 month. And our actions that were taken surely were</p> <p>21 implemented as we moved forward to identify those</p> <p>22 individuals and any individuals that additional needs</p> <p>23 were required to avoid similar incidents.</p> <p>24 Q. (BY MR. EDWARDS) Okay. I want to make sure</p> <p>25 I understand. I mean, is it the position of the Texas</p>	<p style="text-align: right;">96</p> <p>1 A. And we did.</p> <p>2 Q. (BY MR. EDWARDS) And you did. Okay. And</p> <p>3 you did and, to your knowledge, Director Stephens did.</p> <p>4 Correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And to your knowledge, Director Eason would</p> <p>7 have examined that. Right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And you certainly would hope that</p> <p>10 Warden Pringle would exam those that occurred at his</p> <p>11 facility. Right?</p> <p>12 A. Reviewed the fact -- circumstances, yes,</p> <p>13 sir.</p> <p>14 Q. Okay. And certainly your directors meetings</p> <p>15 you would be updating Regional Director Eason and</p> <p>16 making sure that he tells his wardens that he's</p> <p>17 supervising, look, this summer is extremely hot.</p> <p>18 We've got to take extra precautions. Right?</p> <p>19 A. Surely -- surely was addressed at every</p> <p>20 regional directors meeting that we had, the need to</p> <p>21 take precautions relating to heat-related illnesses.</p> <p>22 Q. And you recall specifically doing that and</p> <p>23 addressing that at these regional meetings in the 2011</p> <p>24 time period before Mr. McCollum died. Right?</p> <p>25 A. I surely had it on my agenda, so I am sure I</p>

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<p style="text-align: right;">97</p> <p>1 addressed it.</p> <p>2 Q. Okay. And this is my question. To not</p> <p>3 address it would have been unacceptable. Correct?</p> <p>4 A. Well, again, to bring attention to it and</p> <p>5 take appropriate action is --</p> <p>6 Q. And I appreciate --</p> <p>7 A. -- is appropriate.</p> <p>8 Q. And that's what you did. That's what you're</p> <p>9 telling this jury you personally did. Correct, sir?</p> <p>10 A. Right.</p> <p>11 Q. Okay. Now, my question, though, is a little</p> <p>12 bit different. You would agree with me that to not do</p> <p>13 that would be dangerous to the inmate population.</p> <p>14 Right?</p> <p>15 MR. GARCIA: Objection. Speculation.</p> <p>16 A. To not review incidents and make a</p> <p>17 determination as to anything that could be done to</p> <p>18 avoid future incidents?</p> <p>19 Q. (BY MR. EDWARDS) Of course.</p> <p>20 A. Right.</p> <p>21 Q. Look, you're at the top of the food chain.</p> <p>22 You and Director Stephens, Director Eason, you guys</p> <p>23 are responsible for making sure these policies, even</p> <p>24 if they're informal e-mails, actually get implemented.</p> <p>25 Right?</p>	<p style="text-align: right;">99</p> <p>1 A. Extreme heat could cause heat-related</p> <p>2 illness which ultimately could relate in death.</p> <p>3 Q. (BY MR. EDWARDS) And you provide a chart</p> <p>4 where you say, look, it's possible, it's probable,</p> <p>5 it's imminent. Right?</p> <p>6 A. Right.</p> <p>7 Q. And north of 130 degrees, heat stroke is</p> <p>8 imminent. Right?</p> <p>9 MR. GARCIA: Objection. Speculation.</p> <p>10 A. I believe that's what the chart reflects.</p> <p>11 Q. (BY MR. EDWARDS) And that's a better way --</p> <p>12 the chart reflects that it's imminent north of 130</p> <p>13 degrees. Right?</p> <p>14 A. I believe --</p> <p>15 MR. GARCIA: Objection.</p> <p>16 Mischaracterizes the evidence --</p> <p>17 Q. (BY MR. EDWARDS) Okay. So --</p> <p>18 MR. GARCIA: Mischaracterizes the</p> <p>19 evidence.</p> <p>20 Let me get my objection in, please.</p> <p>21 Thank you.</p> <p>22 Q. (BY MR. EDWARDS) So would you expect any</p> <p>23 administrator running a prison, if temperatures hit</p> <p>24 those imminent levels, to take immediate steps to deal</p> <p>25 with it?</p>
<p style="text-align: right;">98</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And to not raise the awareness of the</p> <p>3 warden at a particular unit, if you didn't do that, if</p> <p>4 you just said, hey, not my responsibility, somebody</p> <p>5 else will take care of it, you would tell this jury,</p> <p>6 look, that's unacceptable; then I wouldn't be doing my</p> <p>7 job. Is that fair?</p> <p>8 MR. GARCIA: Objection. Compound.</p> <p>9 A. Again, surely as -- as was mentioned, that</p> <p>10 was a subject matter that was covered at every</p> <p>11 meeting.</p> <p>12 Q. (BY MR. EDWARDS) And there was an</p> <p>13 obligation to cover it at every meeting because to not</p> <p>14 cover it would endanger the lives of inmates housed in</p> <p>15 your facilities. Right?</p> <p>16 MR. GARCIA: Objection. Speculation.</p> <p>17 A. Again, it was surely a subject matter that</p> <p>18 should be covered for the appropriate housing and</p> <p>19 treatment of individuals in the facility.</p> <p>20 Q. (BY MR. EDWARDS) And it's not speculation,</p> <p>21 is it? You teach all of your officers and provide</p> <p>22 training that extreme heat endangers the lives of</p> <p>23 inmates. Right?</p> <p>24 MR. ANASTASIDIS: Objection. Calls for</p> <p>25 cumulative evidence to be presented.</p>	<p style="text-align: right;">100</p> <p>1 MR. GARCIA: Objection. Speculation.</p> <p>2 Mischaracterizes the evidence.</p> <p>3 A. Well, again, I would expect individuals</p> <p>4 overseeing the institutions to take continuous steps,</p> <p>5 that they elevate the level of those steps as the -- a</p> <p>6 rise in temperature continued, to increase the</p> <p>7 vigilance of ensuring that the steps were being</p> <p>8 followed to -- to increase the vigilance of staff that</p> <p>9 was supervising those offenders and to increase the</p> <p>10 supervision of those offenders to ensure that we were</p> <p>11 providing appropriate care.</p> <p>12 Q. Is there a temperature that you're aware of</p> <p>13 that just, look, that's too hot to safely run a</p> <p>14 prison?</p> <p>15 A. No, sir, I'm not.</p> <p>16 Q. 150 degrees?</p> <p>17 MR. GARCIA: Objection. Speculation.</p> <p>18 A. Again, I don't know of a specific</p> <p>19 temperature.</p> <p>20 Q. (BY MR. EDWARDS) Would you agree with me</p> <p>21 that if the chart you're using suggests that heat</p> <p>22 stroke is imminent at a certain level that that might</p> <p>23 be a temperature that you might say, look, if it gets</p> <p>24 this high, we have to take special steps?</p> <p>25 MR. GARCIA: Objection, compound.</p>

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<p style="text-align: right;">101</p> <p>1 Objection, speculation. Objection, mischaracterizes 2 the testimony -- 3 A. Well, again, there are steps out there -- 4 THE WITNESS: Oh, sorry. 5 MR. GARCIA: Go ahead. 6 A. There are steps out there. As I said, you 7 surely would increase your vigilance, you sure would 8 increase your supervision. That chart, again, is one 9 specifically in our policy requires that if you're in 10 a work environment that you slow your work pace down, 11 that you increase your water breaks, that -- so there, 12 again, are increased actions as the threat level of 13 excessive temperatures gets higher. 14 Q. Now, there is a temperature at which you 15 don't let people work outside. Right? 16 A. Ultimately. I couldn't recall what that 17 temperature level is. 18 Q. But there is a specific temperature? 19 A. Again, I'm not sure. 20 Q. Okay. These measures right here on 21 Exhibit 50, if they weren't being followed at the 22 Hutchins Unit, I assume you would be extremely 23 critical of the officers or warden who wasn't 24 following them? 25 MS. COOGAN: Objection. Vague.</p>	<p style="text-align: right;">103</p> <p>1 being taken to assist in the mitigation. 2 Q. Well, what is your understanding of how much 3 water in these jugs ought to be provided to 48 inmates 4 who are living in a housing area? 5 A. I can't determine how much water should be 6 provided. They should be checked on routinely, and if 7 it's needed to be refilled, it should be refilled. 8 Q. So it should -- there should be constant 9 access to ice cold water. Fair? 10 A. I believe that -- yeah. I believe that the 11 direction that we give was that we would encourage at 12 a minimum of each shift that that cooler is refilled. 13 But our intent is to, again, continue that process so 14 that it is available to the offenders in the housing 15 area. 16 Q. Okay. Well, those are different standards. 17 Right? 18 A. Right. 19 Q. Okay. I mean, have you been in the 20 Hutchins Unit in the summer? 21 A. Yes, sir. 22 Q. It's brutally hot, right, in the housing 23 areas in the summer months? Based on your experience? 24 A. It's surely warm. It's like most of our 25 prison environments, yes, sir.</p>
<p style="text-align: right;">102</p> <p>1 A. I would surely -- surely be wanting to 2 determine why they weren't being followed. 3 Q. (BY MR. EDWARDS) Because they're really 4 important to be provided. Right? 5 A. There surely are some important mitigating 6 steps there, yes, sir. 7 Q. Discuss the importance of making water 8 available to the inmates. 9 A. Again, in all our housing areas, of course, 10 water is available year round through water fountains 11 or water portals. During the summer months we bring 12 in additional water coolers. Again, in most cases, 13 those coolers should be replaced multiple times 14 throughout the day to allow for additional opportunity 15 for offenders to drink cool water in their housing 16 environment. 17 Q. And if that wasn't happening, you would be 18 critical. Correct? 19 A. I surely would want to know why it was not 20 happening, yes, sir. 21 Q. Well, regardless, whether it was not 22 happening because someone is just a mean, rotten 23 person, or someone is absolutely incompetent, you 24 would be critical. Right? 25 A. It surely would be a step that should be</p>	<p style="text-align: right;">104</p> <p>1 Q. I'm not suggesting that it's any hotter, the 2 temperature depends. But there are internal documents 3 that suggest it's routinely above a hundred degrees in 4 there. Would that be consistent with your experience? 5 A. I don't know if I would say consistently 6 above a hundred, but it is hot in the housing areas, 7 yes, sir. 8 Q. It certainly would meet your standard for 9 extreme heat. Right? 10 MR. GARCIA: Objection. Vague. 11 A. It surely is -- surely would be high heat 12 and would, again, require that increased vigilance 13 that I talked about earlier. 14 Q. (BY MR. EDWARDS) All right. And so I 15 believe you told me, look, you need to be -- you need 16 to provide constant access to iced water. Is that 17 fair? Is that a fair characterization of your 18 testimony? 19 A. In most cases. And in some cases, again, 20 during summer months, we -- we work hard to put out 21 ice water in all of the housing areas and ensure that 22 we have iced substances for each meal for the offender 23 population. So we -- we surely make all efforts to do 24 that, and the warden should be making all efforts to 25 do that.</p>

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<p style="text-align: right;">105</p> <p>1 Q. It is your intent for there to be constant 2 access to ice cold water for the inmates in these 3 extremely hot indoor temperatures. Correct? 4 A. As much as possible, yes, sir. 5 Q. And what would prevent someone from bringing 6 in ice water to the inmates? What would make it 7 impossible to do that? 8 A. I don't know that anything would make it 9 impossible to do that. There are occasions where -- 10 particularly during the summer months on larger 11 facilities, where the ice makers struggle to keep up 12 in some cases with the distribution of the ice to the 13 housing areas. But other than -- short of that. 14 Q. Sure. Short of there being an ice shortage, 15 which I think you would tell the jury, we ought to go 16 buy extra ice if our ice makers break. Right? 17 A. And, again -- 18 Q. Nothing -- 19 A. I'm talking about continuing to distribute 20 it -- to distribute ice water to the dormitories. 21 There might be a -- a time period where that ice maker 22 is catching up. 23 Q. You might miss a time or two, but that 24 shouldn't be, we dropped the bucket off, we come back 25 in eight hours, we do it again. It should be</p>	<p style="text-align: right;">107</p> <p>1 method by which offenders receive fluids in their 2 housing area. There are -- 3 Q. Sinks you're talking about. Right? 4 A. There are water fountain spigots on the 5 sinks that are used as water fountains, similar to 6 water fountains that you would find in other -- in 7 other housing areas on other facilities. 8 Q. Is that warm water or ice cold water? 9 A. It's not ice cold water, no, sir. 10 Q. It's not like a water fountain in a little 11 elementary school. Right? 12 A. It's not chilled water, it is not. But it 13 is water, and hydration is -- the most important issue 14 here. That cool water surely preferred, but hydration 15 is important. 16 Q. Okay. Now, is hydration, in your opinion, 17 the most important issue or is lowering the 18 temperature an equally important issue? 19 MS. COOGAN: Objection. Calls for an 20 expert opinion. 21 A. Well, again, as it relates to providing 22 mitigating circumstances and from discussions with 23 health service staff, the most important thing that 24 you can do particularly to help reduce your body 25 temperature is to intake plenty of fluids during those</p>
<p style="text-align: right;">106</p> <p>1 constantly monitored because, otherwise, you place 2 inmates in danger. Right? 3 A. Particularly during -- as the heat continues 4 to increase, that would be something that I would 5 surely think is reasonable and should be done. 6 Q. Okay. And these jugs of water we're talking 7 about, are they ten-gallon jugs that you might see at 8 a soccer game? The kind that you dump on the coach at 9 the Super Bowl? 10 A. Similar to that. Similar to those size, 11 yes, sir. 12 Q. Okay. Are you aware of how many cups of 13 water are in those jugs? 14 A. I don't know. 15 Q. Are you aware of what the recommended amount 16 of water a human being should drink in periods of heat 17 where it's greater than 90 degrees? 18 A. I can't say that I know, no, sir. 19 Q. As a policy maker for the Texas Department 20 of Criminal Justice, with actual authority make this 21 happen, don't you think you should be aware of that? 22 A. Well, again -- again, that -- that ice jug 23 there is to supplement the water supply that's 24 currently already in the dormitories. So I don't want 25 to make the assumption here that that is the only</p>	<p style="text-align: right;">108</p> <p>1 time periods. So, again, I -- 2 Q. (BY MR. EDWARDS) You've been specifically 3 told that that's the most important thing you can do 4 for most people is to increase your water intake -- 5 A. Well, again -- 6 Q. -- to cool your body. Right? 7 A. -- in dealing with health service staff, 8 that's -- 9 Q. That's what they've told you? 10 A. That's surely something that they want us to 11 ensure that the offender population does to stay 12 hydrated. 13 THE VIDEOGRAPHER: Excuse me, 14 Mr. Edwards, I need to change tapes. 15 MR. EDWARDS: Okay. Let's take a 16 break. Thank you. 17 THE VIDEOGRAPHER: We're off the record 18 at 11:34 a.m. 19 (RECESS.) 20 THE VIDEOGRAPHER: We're back on the 21 record. The time is 11:52 a.m. 22 Q. (BY MR. EDWARDS) Did you have any 23 involvement in the construction or designs of prisons 24 built in the 1990s, sir? 25 A. No, sir.</p>

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<p style="text-align: right;">109</p> <p>1 Q. Do you know who would have?</p> <p>2 A. In general, I'm sure the Facilities Division</p> <p>3 or Construction Division would have played an integral</p> <p>4 role in that, but as far as individuals that were</p> <p>5 involved in that process, no, sir, I couldn't -- at</p> <p>6 that time I couldn't know who would have been the</p> <p>7 decision makers.</p> <p>8 Q. Would the executive director of the agency</p> <p>9 have been one person involved, in all likelihood?</p> <p>10 A. As it relates to the design of the facility,</p> <p>11 again, I would be speculating, and I wouldn't know if</p> <p>12 they would have final say as it related to the number</p> <p>13 of institutions --</p> <p>14 Q. Sure.</p> <p>15 A. -- the size of institutions, probably. As</p> <p>16 it related to the design, I would not know.</p> <p>17 Q. Would you agree with me that air</p> <p>18 conditioning was a common attribute of housing in the</p> <p>19 1990s?</p> <p>20 A. For the most part, yes, sir.</p> <p>21 Q. Actually, speaking of that, have you ever</p> <p>22 been in a public building in the last 25 years that</p> <p>23 didn't have air conditioning? Other than your</p> <p>24 prisons?</p> <p>25 A. Not that I can think of, no, sir.</p>	<p style="text-align: right;">111</p> <p>1 temperature inside, outside?</p> <p>2 A. I don't know of any that I could produce,</p> <p>3 no, sir.</p> <p>4 Q. Okay. Well, I'll represent to you that</p> <p>5 there are documents in this case in which the Risk</p> <p>6 Management Division -- that indicate that the</p> <p>7 temperature inside or outside are plus or minus two or</p> <p>8 three degrees. Is that consistent with your</p> <p>9 experience?</p> <p>10 A. It differs in areas of the state, but I have</p> <p>11 seen at least one document that indicated that.</p> <p>12 Q. And did you see that in your position as --</p> <p>13 as director?</p> <p>14 A. I believe I saw it in reviewing the</p> <p>15 documents for this deposition.</p> <p>16 Q. Okay. So you also reviewed the -- the</p> <p>17 documents from Mr. Story relating to the temperatures</p> <p>18 inside the prison?</p> <p>19 A. I believe that was one of the attachments</p> <p>20 that was in one of the depositions.</p> <p>21 Q. That's a good way to say it. You reviewed</p> <p>22 all of the attachments to all of the depositions which</p> <p>23 you mentioned earlier?</p> <p>24 A. I believe I did.</p> <p>25 Q. Okay. Well, one of the attachments I think</p>
<p style="text-align: right;">110</p> <p>1 Q. Any library, any school, any -- I don't</p> <p>2 know -- anything you can think of?</p> <p>3 MR. ANASTASIDIS: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. Again, no, sir, I can't.</p> <p>6 (BY MR. EDWARDS) Okay. Do you know if</p> <p>7 Guantanamo Bay is air conditioned?</p> <p>8 A. No, sir, I do not.</p> <p>9 Q. I apologize if I asked you this specific,</p> <p>10 but have you ever had any specific conversations about</p> <p>11 lowering the indoor temperature inside the housing</p> <p>12 areas of the TDCJ units that aren't air conditioned?</p> <p>13 A. Again, those considerations that we</p> <p>14 referenced earlier, conversations with the</p> <p>15 Facilities Division about what could be done to ensure</p> <p>16 proper ventilation was working in those particular</p> <p>17 facilities.</p> <p>18 Q. Let me ask you about that, because I</p> <p>19 remember you telling me about the ventilation and</p> <p>20 stuff, but like did you specifically ask about that to</p> <p>21 get the temperature lower?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. Are there any documents that -- you</p> <p>24 know, where there is -- where you're finding out if</p> <p>25 the ventilation systems are actually lowering the</p>	<p style="text-align: right;">112</p> <p>1 we talked about earlier reflected temperatures outside</p> <p>2 of 149 degrees. Do you recall that?</p> <p>3 MS. COOGAN: Objection. Vague, to the</p> <p>4 continued use of the word "temperature" as opposed to</p> <p>5 "ambient air temperature" or "apparent temperature"</p> <p>6 because I think it's misleading.</p> <p>7 A. Again, as I mentioned earlier --</p> <p>8 Q. (BY MR. EDWARDS) Let me ask that again.</p> <p>9 A. Okay.</p> <p>10 Q. The temperature logs that your correctional</p> <p>11 officers fill out, they reflect the apparent</p> <p>12 temperature. Correct?</p> <p>13 A. The temperature -- the dorm temperature,</p> <p>14 yes, sir.</p> <p>15 Q. The temperature, including humidity, what</p> <p>16 the actual effective temperature is on a human being.</p> <p>17 Right?</p> <p>18 A. I would have to look at the log.</p> <p>19 Q. Okay. All right. Well, assume with me that</p> <p>20 there are documents that indicate, in the week</p> <p>21 preceding Mr. McCollum's death at the Hutchins Unit,</p> <p>22 that the temperature logs reflected temperatures of --</p> <p>23 and I'm talking about apparent temperatures -- of</p> <p>24 149 degrees on more than one occasion. What should</p> <p>25 Warden Pringle have done when he saw this?</p>

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<p style="text-align: right;">113</p> <p>1 MR. GARCIA: Objection. Speculation.</p> <p>2 A. Well, again, I think the -- the efforts that</p> <p>3 are put forth, the conversations that, as the warden,</p> <p>4 that I would have with my staff on the particular</p> <p>5 facility, Facilities Division staff, Health Service</p> <p>6 staff, Risk Management staff, we would have been</p> <p>7 discussing any options we had available to mitigate</p> <p>8 the circumstances.</p> <p>9 Q. (BY MR. EDWARDS) All right. At a minimum,</p> <p>10 seeing temperatures like that, 120 degrees, 130</p> <p>11 degrees, 140 degrees on temperature logs, it ought to</p> <p>12 ring a bell in the warden's mind, I need to get with</p> <p>13 my people and take whatever steps I can to mitigate</p> <p>14 this heat?</p> <p>15 A. Again, as a past unit administrator, for</p> <p>16 sure the actions that I would take.</p> <p>17 Q. Okay. And that would include getting with</p> <p>18 risk management to find out if inmates are in danger,</p> <p>19 talking to correctional officers about recognizing the</p> <p>20 signs and symptoms of heat stroke and making sure</p> <p>21 everybody is prepared if the unfortunate event of a</p> <p>22 heat stroke happens. Right?</p> <p>23 A. Surely increasing our vigilance, yes, sir.</p> <p>24 Q. Okay. One of the things in the heat</p> <p>25 precaution list is personal fans, or at least I think</p>	<p style="text-align: right;">115</p> <p>1 coming in, but again, I would rely on health service</p> <p>2 staff to assist me in that process.</p> <p>3 Q. Well, lots of these deaths are happening at</p> <p>4 these transfer facilities. Right?</p> <p>5 A. There are some that have occurred at the</p> <p>6 transfer facilities.</p> <p>7 Q. Gurney Unit, the Hutchins Unit, the</p> <p>8 Garza Unit?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Those are all transfer units. Right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. All those deaths -- most of those</p> <p>13 deaths at those units happened before there was time</p> <p>14 for an intake physical. Right?</p> <p>15 MR. GARCIA: Objection. Speculation.</p> <p>16 A. Again, I would have to review the documents.</p> <p>17 I -- the intake physical normally takes place after</p> <p>18 the initial assessment on the day of arrival. That</p> <p>19 physical would take place normally -- again, I'm</p> <p>20 trying to do this from memory -- the third or fourth</p> <p>21 day of the individual's time that he has arrived on</p> <p>22 the facility.</p> <p>23 In the event that any immediate medical</p> <p>24 needs were identified, of course, at that first</p> <p>25 triage, health services would take care of any</p>
<p style="text-align: right;">114</p> <p>1 that's correct. Do you recall that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Is that meant to be like an</p> <p>4 accommodation that helps comfort prisoners, by TDCJ?</p> <p>5 A. In some cases, yes, sir.</p> <p>6 Q. Would you agree with me -- well, do you</p> <p>7 know -- at the Hutchins Unit there are no plugs for --</p> <p>8 to plug in personal fans so they're not allowed. Is</p> <p>9 that accurate --</p> <p>10 A. Yes, sir.</p> <p>11 Q. So is it fair to say that TDCJ is not making</p> <p>12 that little accommodation in terms of personal fans</p> <p>13 available to people at the Hutchins Unit?</p> <p>14 A. Offenders at the Hutchins Unit do not have</p> <p>15 the availability of an outlet to use a personal fan.</p> <p>16 Q. Which denies them the benefit of a personal</p> <p>17 fan. Right?</p> <p>18 A. Well, again, if they have one in their</p> <p>19 possession, it wouldn't do them any good, so...</p> <p>20 Q. Well, I assume you are, but let me make</p> <p>21 sure. Are you aware of the increased danger to</p> <p>22 inmates when they are acclimating to these higher</p> <p>23 apparent temperatures in transfer facilities?</p> <p>24 A. Again, I don't know how much general</p> <p>25 knowledge I have about how that affects the body</p>	<p style="text-align: right;">116</p> <p>1 immediate needs. But the normal physical, I believe,</p> <p>2 is done on the third or fourth day, but I'm not the</p> <p>3 expert to testify to that.</p> <p>4 Q. Sure. And I'll represent to you that there</p> <p>5 has been testimony in this case that the intake</p> <p>6 physical, at least with regard to the Hutchins Unit,</p> <p>7 is done in a period seven to ten days --</p> <p>8 MR. GARCIA: Objection.</p> <p>9 Mischaracterizes the testimony.</p> <p>10 MS. COOGAN: Join.</p> <p>11 Q. (BY MR. EDWARDS) -- from the time of entry.</p> <p>12 A. Again, I'm --</p> <p>13 MR. ANASTASIDIS: Objection. There is</p> <p>14 no question on the floor. You represented him some</p> <p>15 facts. You have not asked him a question.</p> <p>16 You do not have to answer his</p> <p>17 narrative.</p> <p>18 Q. (BY MR. EDWARDS) Is it your understanding</p> <p>19 that the intake physical could take seven to ten days</p> <p>20 at the Hutchins Unit, based on your review of Director</p> <p>21 Eason and Warden Pringle's depositions?</p> <p>22 A. I don't remember those statements in the</p> <p>23 deposition, to be honest with you.</p> <p>24 Q. If they said that, would that surprise you?</p> <p>25 A. Again, normally that physical --</p>

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<p style="text-align: right;">117</p> <p>1 MR. ANASTASIDIS: Objection. Whether 2 this inmate -- this witness would be surprised by an 3 event or not is not relevant to any issue in this 4 case. 5 Q. (BY MR. EDWARDS) You can answer -- 6 MS. COOGAN: Join. And I object that 7 that's not even the right deposition. 8 MR. ANASTASIDIS: If you're able to 9 answer that, you can go ahead. 10 A. Well, again, historically, I believe that 11 physical is normally done during those first few days 12 of entering the facility. So I don't know that 13 "surprise" would be a word that I would use. 14 Q. (BY MR. EDWARDS) Your expectation would be 15 these intake physicals are done within four days of an 16 inmate's arrival at a facility? 17 A. I would -- I would say, surely within the 18 first few days, normally, that's what I would believe 19 to be the process. 20 Q. Well, that's fair. Can you think of any 21 reason why it would take seven to ten days to get 22 someone an intake physical? 23 A. I can't -- I can't speak for health services 24 or -- or how long it would take for them to get 25 through the hundred or so each week that show up on</p>	<p style="text-align: right;">119</p> <p>1 I have -- I would have a problem with those taking 2 place a few days after arrival. 3 Q. Well, most inmates, when they're coming to a 4 transfer facility, are coming from county jails. 5 Right? 6 A. They are. 7 Q. Those are air conditioned. Right? 8 A. Most of the them, probably, I believe. 9 Q. By -- well, you familiar with that a law 10 requires them to be air conditioned? 11 A. I'm somewhat familiar with that jail 12 standard out there, yes, sir. 13 Q. Okay. Can you think of any good reason why 14 county jails would have to be air conditioned, but 15 state jails can house people in temperatures over a 16 hundred degrees? 17 MR. ANASTASIDIS: Objection. Calls for 18 this witness to speculate. 19 MR. GARCIA: Objection. Argumentative. 20 A. Again, I can't speculate as to why the 21 county jails adopted that standard. 22 Q. (BY MR. EDWARDS) Well, the county jails 23 adopted -- are you aware that the legislature passed a 24 law requiring the county jails to air condition their 25 facilities?</p>
<p style="text-align: right;">118</p> <p>1 the Hutchins facility. 2 Q. Okay. So about a hundred people come each 3 week? Do you see any problems with not having intake 4 physicals done -- or strike that. 5 Do you see any problems with having 6 intake physicals done, four or five, six, seven, 7 eight, nine, ten days after an inmate arrives? 8 A. Well, again, from my experience, there is a 9 process that is put in place for initial screening of 10 individuals assigned to any institution. Of course, 11 that first contact would be generated from the entity 12 that is actually transferring the individual to us. 13 So any immediate or urgent medical care needs would 14 normally be passed on from that entity to us and, in 15 many cases, prior to the individual being transferred 16 in to us. So that would be the first measure. 17 And the second measure would be that 18 initial assessment by a health service personnel upon 19 arrival. So health service staff has established that 20 policy and used that triage, in my experience, to 21 determine whether or not an immediate contact with a 22 health care professional was required or that they 23 would be processed through the normal intake process. 24 So, again, assuming those processes are working 25 appropriately, then I don't know that I could say that</p>	<p style="text-align: right;">120</p> <p>1 A. I'm not personally aware of that law, no, 2 sir. 3 Q. Okay. Can you think of any legitimate 4 reason why the county jails would have to air 5 condition, but the state jails -- the state prison 6 facilities wouldn't have to? 7 MR. ANASTASIDIS: Objection. Asks this 8 witness to form an opinion as to something he has no 9 personal knowledge or ability to formulate. 10 MR. GARCIA: And argumentative. 11 A. I can't speak for the legislature as to why 12 they would -- 13 Q. (BY MR. EDWARDS) Okay. I'm not asking you 14 to speak for the legislature. I'm representing to you 15 that county jails are air conditioned, which is 16 consistent with your experience. Correct? 17 A. Yes, sir. 18 Q. Okay. Also, you've told me that many prison 19 facilities are not air conditioned, like the 20 Hutchins Unit. Right? 21 A. Correct. 22 Q. Can you think of any good reason for that 23 distinction? 24 MR. GARCIA: Objection. Argumentative. 25 A. Well, again, I think that, as you stated, if</p>

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<p style="text-align: right;">121</p> <p>1 indeed it's a true statement that there is legislative 2 intent for all county jails to be air conditioned, 3 then that was mandated by the legislature, so county 4 jails follow those instructions. 5 Q. (BY MR. EDWARDS) Any other reason you can 6 think of? 7 MS. COOGAN: Objection. Speculation. 8 A. No. 9 Q. (BY MR. EDWARDS) Okay. You don't need 10 this -- this high heat in order to effectively punish 11 the inmates for the crimes they've committed, do you? 12 A. No, sir, not at all. 13 Q. Okay. Is there any penal purpose like 14 specifically for keeping -- there being no air 15 conditioning in the prisons? 16 A. No -- no -- as it relates to not bringing 17 conditioned air into systems as a form of punishment, 18 absolutely not. 19 Q. Okay. Tell me what the EAC system is, sir. 20 A. It's the Emergency Action Center. It's a 21 hub that collects information from different 22 divisional components, different facilities and units, 23 on incidents that have occurred throughout the system. 24 Q. Is it fair to say that the purpose is to 25 inform supervisors about problems at the prison?</p>	<p style="text-align: right;">123</p> <p>1 implemented. 2 Again, those reports are available for 3 review, but as far as when they come in from the 4 facilities, the EAC department is the depository for 5 that information. 6 Q. With regards to the McCollum case, I guess, 7 would regional -- then Regional Director Eason have 8 seen the EAC reports? 9 A. Yes. That EAC report, when it leaves the 10 facility, funnels through the regional director's 11 office prior to forwarding to the EAC center. 12 Q. And then would it also get to you and 13 Mr. Stephens? 14 A. Not necessarily in all cases. Again, if it 15 required an action plan, then that is something that 16 would surely have gone to the appropriate deputy 17 director, depending on what the circumstances were of 18 the EAC report. 19 Q. Do you review most reports involving deaths? 20 A. Many -- many of the reports I have reviewed, 21 but I can't say that I review every report that 22 involves an offender death. 23 Q. Okay. Did you review the report involving 24 Mr. McCollum? 25 A. I have subsequently reviewed that report. I</p>
<p style="text-align: right;">122</p> <p>1 A. In some cases it disseminates information 2 about incidents that have occurred. Some are 3 problems, some are just incidents. 4 Q. I understand -- I appreciate that. It would 5 include prisoner injuries? 6 A. To the EAC center, yes, sir. In some cases 7 it would, yes. 8 Q. Including prisoners that die? 9 A. Prisoners that have died in the institution, 10 there would be an EAC report sent to the Emergency 11 Action Center. 12 Q. Prisoners who suffer heat stroke and die, 13 there would be an EAC report. Right? 14 A. There should be an EAC report on any death 15 in our system. 16 Q. Who reviews the reports from the EAC system? 17 If you know? 18 A. Again, depending on the category of the 19 report, most reports are filed -- are forwarded to the 20 EAC center. They're filed there in the Emergency 21 Action Center. If there is an action plan that 22 accompanies that report, then that action plan and a 23 copy of that report would be forwarded to the 24 appropriate, in most cases, deputy director within the 25 division to ensure that the -- any action plan was</p>	<p style="text-align: right;">124</p> <p>1 can't -- I cannot remember, in 2011, at what point 2 that I personally became aware of it or what documents 3 I reviewed, but I have reviewed it prior to this 4 deposition. 5 Q. Okay. Do you believe -- I mean, I'm trying 6 to drill down on it a little bit. Should you have 7 reviewed it in 2011 when it came in? 8 A. Well, again, there is multiple entities that 9 report to me, particularly as it -- as it relates to 10 an offender's death. So in some cases that report is 11 actually reviewed personally by me, in other cases 12 there are discussions with my appropriate deputy 13 director. Potentially, in these cases, discussion 14 with the Health Services Division director regarding 15 the circumstances surrounding the particular incident. 16 So, again, I can't assure you that in all cases I 17 review every report. 18 Q. But it's important for the people in the 19 hierarchical chain to be reviewing these to discover 20 patterns. Right? 21 A. Well, it's surely important that we discuss 22 the facts concerning the particular incident and 23 determine if there is any modifications to procedures 24 or policies that should take place as we move forward, 25 yes, sir.</p>

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<p style="text-align: right;">125</p> <p>1 Q. And are you aware of how many heat stroke 2 deaths there were in 2011 in the region supervised by 3 Director Eason? 4 A. There would have been seven. 5 Q. That is a very high number. Is that 6 correct, for one region? 7 A. Yes, sir. 8 Q. Did you guys make any changes other than to 9 make sure you were following this e-mail that you guys 10 send out every May? 11 A. Well, again, that's -- that summer in 2011, 12 is -- we were surely dealing with temperatures that 13 arose. Different parts of the state were affected 14 differently, again, because it was driven from the 15 temperature. So Warden Eason -- or Mr. Eason, I'm 16 sorry, there surely were conversations that took place 17 about what additional training, what additional 18 instruction, what, if any, additional steps were being 19 discussed with his unit wardens that needed to take 20 place. Again, those deaths in that particular year 21 occurred in a -- a relatively short period of time, 22 but those conversations took place over that -- 23 sometime over that two- or three-week period. 24 Q. Okay. So over those two or three weeks, you 25 do recall specifically talking with Director Eason</p>	<p style="text-align: right;">127</p> <p>1 the summer of 2011? 2 A. Well, again, deaths of any nature sure do 3 bring some additional attention to -- to any effort. 4 And, obviously, as we discussed what we were currently 5 doing out there to identify any individuals that 6 potentially were -- were suffering from heat-related 7 illness, I felt, and Doctor Linthicum concurred, that 8 relying on in some cases offenders to self report or 9 in other cases for our staff to identify individuals 10 as they routinely made their rounds was surely 11 something that was in place and had provided some 12 level of identification for many years. We felt that 13 we needed to step up that effort and put an extra 14 burden on staff out there in order to make sure that 15 if health service staff felt that anybody might be 16 susceptible as we move into the seasonal time of the 17 year, no matter what the temperature was, that we 18 would create a -- a checklist whereby the staff member 19 would make face-to-face contact with the individual to 20 check on their well-being throughout the day, so that 21 if they noticed any signs of distress or any initial 22 signs of a potential heat-related illness so that 23 health service staff could be notified immediately and 24 appropriate care could be given. 25 Q. Okay. That sounds like it's an</p>
<p style="text-align: right;">126</p> <p>1 about these deaths and how important it was to add 2 additional training and instruction? 3 A. Well, again, generally, during any formal 4 meeting we would have had, I surely would talk 5 directly with Mr. Eason. Whether I spoke with 6 Mr. Eason or Mr. Stephens spoke with Mr. Eason, I 7 cannot tell you for sure. 8 Q. Is heat illness or heat stroke a specific 9 type of problem type or -- and if that's not the right 10 word, tell me -- that's delineated by the report? 11 Like is there assault, heat stroke, and stuff like 12 that? Is it separated out to make it easier for you 13 guys to spot patterns? 14 A. It -- I'm trying to remember. I believe 15 it's broken out by staff and offender, but I'm not 16 sure whether -- whether specific details on the 17 summary report of the EAC, how they break that out as 18 it relates to heat-related issues. 19 Q. I believe you told me that -- that after the 20 deaths occurred in 2011, that you implemented a 21 wellness check policy or a heat list. Did I -- am I 22 recalling that accurately? 23 A. Yes. 24 Q. Is that kind of a change that you guys made 25 specifically because of the high number of deaths in</p>	<p style="text-align: right;">128</p> <p>1 accommodation or a benefit that the department, TDCJ, 2 is now providing to people who with -- I don't know, 3 heat vulnerable propensities. Is that fair? 4 A. Yes, sir. 5 Q. Okay. And those -- I want to go through 6 that list of kind of people with heat vulnerable 7 propensities or disabilities. And what I mean by that 8 is, it affects the way they live and function in the 9 environment. We're talking about depression. That's 10 one of them. Right? 11 A. Well -- 12 MR. GARCIA: Objection. Compound. 13 Q. (BY MR. EDWARDS) Is it one of them? 14 A. Well, again, what -- what we rely on is the 15 expertise of the health service professionals. So 16 when we talk about the totality of individuals that 17 are included in that list, I would surely, through 18 general conversations with health service staff, say 19 that several of those groups that we talked about 20 earlier, particularly those that were on psychotropic 21 medications, potentially, those that had hypertension 22 issues, would surely be on that list. 23 Q. What about diabetics? 24 A. I would again make the assumption that most 25 diabetics, because their medical condition would be on</p>

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<p style="text-align: right;">129</p> <p>1 there, but again, health service professionals would 2 be the experts. 3 Q. And the health service professionals that 4 you talk about, that is -- is medical providers at the 5 University of Texas Medical Branch, or the Health 6 Services Division of TDCJ? 7 A. In this case, it would be the individual 8 providers at the facility that identify those 9 individuals on their facilities. 10 Q. Are they employed by UTMB or are they 11 employed by TDCJ? 12 A. To my knowledge, they're -- would be 13 employed by UTMB. 14 Q. Okay. So this licensed vocational nurse who 15 might look at somebody when they get off the bus into 16 the system and do that initial, is there an immediate 17 need, that would be a UTMB person. Right? 18 A. Right. 19 Q. Okay. And TDCJ is relying on UTMB to assess 20 their heat-sensitive vulnerabilities. Right? 21 A. Correct. 22 Q. Okay. So we went through psychotropic -- 23 people on psychotropic drugs, people with 24 hypertension, diabetics. What about mentally ill 25 persons or people with depression that have to take</p>	<p style="text-align: right;">131</p> <p>1 Q. Okay. And was that developed in 2 coordination with UTMB or was that just developed by 3 TDCJ out the concern for its inmate population? 4 A. Well, I work with -- 5 Q. If you know? 6 A. I work with Doctor Linthicum, so her 7 interaction with our health care providers, I could 8 not speak to the degree that -- that they worked 9 together on it. But it was something that 10 Doctor Linthicum and -- and I myself discussed. 11 Q. (BY MR. EDWARDS) Is Doctor Linthicum -- and 12 I apologize, I probably should know this -- is she 13 employed by UTMB or is she employed by TDCJ? 14 A. She is employed by TDCJ as the health 15 service director. 16 Q. Okay. So other than Doctor Linthicum, did 17 you discuss this with anyone at UTMB? 18 A. No, sir. 19 Q. Okay. All right. Now, when that initial -- 20 I don't know if you call it assessment, or kind of 21 when they come in, assessing immediate needs, if the 22 UTMB person doing that were to say, this person needs 23 to be housed in an air conditioned environment, would 24 TDCJ follow that recommendation? 25 A. Yes.</p>
<p style="text-align: right;">130</p> <p>1 medications where the heat affects them? 2 A. Again, I would say that list would be 3 inclusive of those that take medications that would 4 increase their propensity to heat-related illness. 5 But, again, I'm not the subject matter expert in 6 there, so I don't want to tell you anything for 7 definite that I'm not sure of. 8 Q. Okay. What about obesity, is that something 9 that TDCJ teaches people, that people who are obese 10 are vulnerable to extreme heat as well? 11 A. Again, surely they can be. At what level 12 that individual is placed on that list, again, I'm -- 13 I cannot tell you. 14 Q. All right. But after the summer of 2011, 15 the policy changed at TDCJ to rely on UTMB to identify 16 these people who were vulnerable to extreme heat and 17 actually place them on a list where your officers 18 would conduct wellness checks on them throughout the 19 day? 20 A. Right. Prior to 2011, we've always relied 21 on UTMB to ensure that the individuals could be 22 appropriately housed on any of our facilities. But 23 subsequent to the incidents in 2011, that additional 24 measure of development of that checklist was 25 developed.</p>	<p style="text-align: right;">132</p> <p>1 Q. That's like a hundred times out of a 2 hundred. You're not providing medical care, they are. 3 Right? 4 A. Well, again, any medical restrictions that 5 were placed on an offender, we surely -- medical 6 surely has the autonomy to make those decisions and we 7 would have to abide by them. 8 Q. Okay. Now, in a situation where UTMB said, 9 look, this person needs to be housed in an air 10 conditioned environment, would you be able to say, 11 whoa, huh-uh, that's too expensive. Or would you have 12 to follow their recommendation? 13 A. Again, if that were to happen today, then 14 the normal process would be that UTMB would notify the 15 unit administrator, the unit classification process. 16 We would have to find appropriate housing for that 17 offender. If it was potentially possible to put that 18 individual in a -- in a portion of the facility that 19 had controlled air on that particular facility, at 20 least temporarily, that would be the first action. 21 And then, subsequent to that, 22 classification would find an appropriate facility that 23 had conditioned air and that transfer would be 24 initiated for that individual. 25 Q. Okay. And there are, in fact, facilities</p>

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<p style="text-align: right;">133</p> <p>1 that do have conditioned air?</p> <p>2 A. There are some.</p> <p>3 Q. Okay. Were you familiar with the Blackmon</p> <p>4 lawsuit during your time at TDCJ?</p> <p>5 A. I want to say that might have occurred as I</p> <p>6 was -- I didn't have any involvement in it. And just</p> <p>7 my recollection is that that is something that might</p> <p>8 have occurred when I was in my other role in the</p> <p>9 Manufacturing and Logistics Division, I'm not sure.</p> <p>10 Q. Okay. When did you -- I mean, have you been</p> <p>11 made aware of deaths at the Byrd Unit due to heat?</p> <p>12 A. Again --</p> <p>13 Q. In 2007?</p> <p>14 A. Through discovery of this lawsuit, yes, sir.</p> <p>15 Q. Do you know how long Director Livingston has</p> <p>16 been in his position?</p> <p>17 A. The current executive director's position, I</p> <p>18 want to say that -- maybe eight or nine years. But,</p> <p>19 again, I'm not sure on that date, so...</p> <p>20 Q. Okay. Is he made aware of inmate deaths at</p> <p>21 facilities?</p> <p>22 MR. GARCIA: Objection. Asked and</p> <p>23 answered.</p> <p>24 A. Again, in some cases there would be some</p> <p>25 discussion, but not in every case on every death, no,</p>	<p style="text-align: right;">135</p> <p>1 place through Doctor Linthicum. And -- although there</p> <p>2 are occasional times when we would meet, those are</p> <p>3 very seldom directly. Doctor Linthicum manages that</p> <p>4 part of the process.</p> <p>5 Q. If you were to talk with people at UTMB, do</p> <p>6 you recall who it would be? Would it be Doctor</p> <p>7 Murray, would it be someone else?</p> <p>8 A. Again, over my tenure with -- with the</p> <p>9 department, and particularly in my Correctional</p> <p>10 Institutions Division director's job, there were</p> <p>11 subject matter that related to a hospital in Galveston</p> <p>12 where Doctor Murray might have been present. But --</p> <p>13 but routinely, again, unit-based issues in my case</p> <p>14 were mostly taken directly to Doctor Linthicum for</p> <p>15 discussion with our contracting partners.</p> <p>16 Q. Okay. Now, you've told me that you had been</p> <p>17 in the Hutchins Unit in the summer. I'm going to ask</p> <p>18 you questions about other units. Okay?</p> <p>19 A. Okay.</p> <p>20 Q. Have you been in the Gurney Unit in the</p> <p>21 summer during your tenure from '09 to 2012 -- or 2013?</p> <p>22 A. I've been on Gurney Unit, but I don't</p> <p>23 know -- I can't remember what time of the year that</p> <p>24 was.</p> <p>25 Q. What about the Hodge Unit?</p>
<p style="text-align: right;">134</p> <p>1 sir.</p> <p>2 Q. (BY MR. EDWARDS) Have you had discussions</p> <p>3 with Doctor Linthicum or anyone at UTMB about the</p> <p>4 problem of acclimation from air conditioned county</p> <p>5 facilities to transfer facilities that aren't air</p> <p>6 conditioned?</p> <p>7 MS. COOGAN: Objection.</p> <p>8 Doctor Linthicum, as he testified, works for TDCJ, so</p> <p>9 your question is vague and misleading because you</p> <p>10 represented -- you said, have you had discussions with</p> <p>11 Linthicum or anybody else that works at UTMB.</p> <p>12 MR. EDWARDS: Well, we'll break it up.</p> <p>13 Q. (BY MR. EDWARDS) Have you had any</p> <p>14 conversations with Doctor Linthicum about acclimation</p> <p>15 and the problems that ensue from coming from air</p> <p>16 conditioned facilities to non-air conditioned</p> <p>17 facilities?</p> <p>18 A. Again, I can't remember any specific</p> <p>19 conversations about acclimation. We have had repeated</p> <p>20 conversations about individuals in-taking into our</p> <p>21 system and appropriate care for those offenders.</p> <p>22 Q. Okay. Same question as to anybody from</p> <p>23 UTMB?</p> <p>24 A. No, sir, I -- most communications, direct</p> <p>25 communications with UTMB at the leadership level take</p>	<p style="text-align: right;">136</p> <p>1 A. No, sir.</p> <p>2 Q. What about the Garza West Unit?</p> <p>3 A. I have been on Garza East and West, but,</p> <p>4 again, I have been down -- I've been down there a</p> <p>5 couple of times. I want to say one time might have</p> <p>6 been during the summer or spring, the other time I</p> <p>7 believe was in the fall.</p> <p>8 Q. What about the Michael Unit?</p> <p>9 A. No, sir.</p> <p>10 Q. What about the Huntsville Unit?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Do you know why the Walker Sayle Unit</p> <p>13 is air conditioned?</p> <p>14 A. No, sir, I do not.</p> <p>15 Q. Do you know why Skyview or Montford are air</p> <p>16 conditioned?</p> <p>17 A. Skyview and Montford are inpatient mental</p> <p>18 health facilities, and those are conditioned air.</p> <p>19 Q. Did UTMB or -- did UTMB ever tell you that</p> <p>20 these facilities should have air conditioning?</p> <p>21 A. Again, when --</p> <p>22 Q. Or does it predate you?</p> <p>23 A. Yeah. Again, when those facilities were</p> <p>24 constructed, to my knowledge, surely at Montford --</p> <p>25 Skyview is somewhat older -- they were constructed for</p>

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<p style="text-align: right;">137</p> <p>1 that purpose, I believe, and similar to Jester IV, 2 have conditioned air. 3 Q. Okay. Do you know when Montford or Skyview 4 were constructed? 5 A. I can't -- I cannot speak to Skyview. I 6 want to say the Montford facility would have been in 7 the mid '90s. 8 Q. Mid '90s? Okay. 9 (Deposition Exhibit No. 51 marked.) 10 Q. (BY MR. EDWARDS) Sir, I'm going to hand you 11 the inclement weather policy. Could you confirm that 12 that is, in fact, the inclement weather policy for 13 TDCJ? 14 MR. EDWARDS: Demetri, there you go. 15 MR. ANASTASIDIS: Thank you. 16 A. This is security memorandum 6.07. 17 Q. (BY MR. EDWARDS) And is the subject line 18 Inclement Weather? 19 A. Yes, sir. 20 Q. And does inclement weather, according to 21 this policy, include temperatures, hot or cold, that 22 may pose safety, health, or security risks? 23 A. Yes. 24 Q. Why does this -- well, I guess, would you 25 agree with me that this policy only addresses outdoor</p>	<p style="text-align: right;">139</p> <p>1 have that -- is that accurate? 2 A. As it relates to a continuation of 3 recreation, the warden would have the final call, yes, 4 sir. 5 Q. And if he decides that there is inclement 6 weather, hot or cold conditions that pose a danger, 7 according to this, he is supposed to bring the outdoor 8 people -- outdoor labor, recreation inside. Correct? 9 A. Correct. 10 Q. Did anyone have to approve this besides 11 yourself before it became final? 12 A. No, sir. 13 Q. Okay. At least -- or I guess I'll ask, for 14 you and for TDCJ, do you agree that the National 15 Weather Service is a reliable source of information 16 about weather? 17 A. Yes, sir. 18 Q. Okay. And is there any more specific 19 guidance as to at what temperature this policy should 20 be implemented by a warden? 90 degrees, 95 degrees, 21 97 degrees, 101 degrees? 22 A. There is no specific temperature that I see. 23 Q. Do you provide any guidance to the wardens 24 as to when they should do this? 25 A. No, sir. Again, as a warden, when I made</p>
<p style="text-align: right;">138</p> <p>1 recreation and outdoor labor? 2 A. Yes. 3 Q. Do you know why this policy has your 4 signature on it? 5 A. Because it is a divisional inclement weather 6 policy as opposed to agency inclement weather policy. 7 Q. Help me -- explain that to me in a little 8 more -- what does that mean, a divisional policy as 9 opposed to an agency policy? 10 A. Meaning again, as I explained earlier, if 11 it's a policy that affects multiple divisions and is 12 sent out by the executive leadership, then it would be 13 in an administrative directive form. It is a policy 14 that in some cases supplements agency policy, specific 15 in some cases to the division or activities within 16 that division, then that might be signed by the 17 division director. In this case, a security 18 memorandum is generated and in most cases issued to 19 deal with security matters within the Correctional 20 Institutions Division specifically, so it wouldn't -- 21 would not be the policy that would go across the board 22 to all divisions. 23 Q. Okay. Is there any -- it looks like a 24 determination whether or not the conditions are hot 25 and pose a danger would be made by the warden. Do I</p>	<p style="text-align: right;">140</p> <p>1 this determination, I made it in conjunction with my 2 administrative review and risk manager officer on the 3 facility and my Health Services Division. 4 Q. Who would have been your risk management 5 person? Would that have been Sharon Howell? 6 A. No. I'm talking about other -- the old term 7 would have been the fire and safety officer, the risk 8 management officer on the facility. 9 Q. Okay. 10 A. So each facility has a fire and safety 11 officer, or a risk management officer on their 12 facility that assists them in safety and 13 training-related issues, in fire and safety issues on 14 a facility. 15 Q. You may not know this, but would that be 16 Mr. Story as to the Hutchins Unit? 17 A. Yes. I believe it is Mr. Story, yes. 18 Q. So would Mr. Story and Mr. Pringle get 19 together and decide, look, it's -- these conditions 20 are getting pretty hot, we need to bring people in? 21 A. Again, I can't dictate exactly how 22 Warden Pringle made this determination as his case. 23 But as a warden, that's the individuals that I 24 involved when I made that decision. 25 Q. Okay. Are there any checks to see if</p>

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<p style="text-align: right;">141</p> <p>1 wardens are, in fact, following this inclement weather 2 security memorandum? 3 A. Just, again, besides visual checks by the 4 regional director, if the warden is not following in 5 the recommendations, could be notified, the regional 6 director. If there is an offender complaint filed, 7 particularly at the second level, those complaints 8 would go to the regional director for addressing. So 9 other than that, as far as a team going out and 10 checking to make sure he is complying with this, I 11 don't know of any formal check process. 12 Q. Fair enough. Basically what I'm trying to 13 figure out is, if the temperature is 100 degrees ten 14 days in a row, do they -- is there any document that 15 gets sent from the warden up where you could say, 16 whoa, that -- seven days in a row, guys, we need to 17 make sure that you're bringing people in from the rec 18 yard or from the -- anything formal like that? 19 A. I don't know of any formal document in that 20 case that would be forwarded up the chain, no, sir. 21 Q. Okay. All right. Your understanding as one 22 of the policy makers -- well, is it fair that you're 23 one of the policy makers for the Texas Department of 24 Criminal Justice, at least in your role as director of 25 the criminal institution division?</p>	<p style="text-align: right;">143</p> <p>1 final decision, no, sir. 2 Q. We would have to ask him that? You can't 3 help us in with regard? 4 A. Well, again, no, sir. I don't know directly 5 who makes the final call. 6 Q. Okay. Do you have any suspicions as to who 7 makes the final call? 8 A. Again, I don't -- I don't know directly -- 9 Q. I understand you don't know and this is a 10 very difficult question and they can object, 11 speculation. I totally -- I'm just trying to -- help 12 me out a little bit. Do you have any idea? 13 A. There would surely be some coordination 14 between Doctor Linthicum and the health service 15 providers who -- who determine the resources needed 16 for appropriate health care on our facilities. That 17 surely would be discussed with executive 18 administration, the same as I would discuss any issues 19 with executive administration. But as far as who made 20 the final determination and the decision and who is 21 informed of it, I cannot speak to that. I'm not -- I 22 don't have -- I'm not an expert on that subject 23 matter. 24 Q. All right. If you don't know, you don't 25 know.</p>
<p style="text-align: right;">142</p> <p>1 A. There are some policies that I surely play a 2 role in developing, yes, sir. 3 Q. Based on your experience, at least at the 4 facilities that UTMB manages health care, does TDCJ 5 and UTMB work together to make sure that prisoners get 6 access to health care? At least, is that the way it's 7 supposed to work? 8 A. Yes, sir. I would say that the two entities 9 work together to ensure access to health care, yes, 10 sir. 11 Q. Okay. Does TDCJ rely on UTMB to make sure 12 that prisoners are safe and healthy? 13 MS. COOGAN: Objection. Vague. 14 A. Again, we surely rely on that contract 15 entity to provide those services to our offender 16 population, yes, sir. 17 Q. (BY MR. EDWARDS) Okay. Decisions relating 18 to the time that UTMB is on a facility. For instance, 19 whether there is eight hours of UTMB care or 24-hour 20 care, who makes that call? Let's start, do you make 21 that decision? 22 A. No, sir. 23 Q. Okay. Do you know if Director Livingston is 24 involved in that decision? 25 A. I cannot directly tell you who makes the</p>	<p style="text-align: right;">144</p> <p>1 A. I don't know. 2 Q. Okay. Do you know if there was ever 24-hour 3 care, medical care at the Hutchins Unit? 4 A. Again, my first direct interactions with 5 Hutchins Unit was when I came into the directorship in 6 2009. I do not believe there was ever 24-hour care 7 there. But, again, I'm not the expert -- 8 Q. We'll ask somebody else. 9 A. -- don't take my word for it. 10 Q. Okay. What about at Gurney, do you know if 11 there was 24-hour care at Gurney? 12 A. No, sir. I do not whether that -- 13 Q. And then the period I'm asking you about, 14 let's say, is '09 to 2012. 15 A. Okay. 16 Q. Or 2013, excuse me. You don't know? 17 A. As far as I remember, I do not remember 18 24-hour care at those two facilities during my 19 tenure -- 20 Q. Okay. And I suspect I know the answer, so I 21 apologize in advance for asking this, but let's go 22 through the list. What about Garza West? 23 A. Again, I do not know. 24 Q. Michael Unit? 25 A. And is this during --</p>

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<p style="text-align: right;">145</p> <p>1 Q. From '09 to 2013.</p> <p>2 A. '09 through 2013, again, Michael Unit has</p> <p>3 24-hour care.</p> <p>4 Q. Okay. What about Huntsville?</p> <p>5 A. Huntsville -- I believe it does, but I'm not</p> <p>6 sure. Because we have a transit population there, I</p> <p>7 believe it does.</p> <p>8 Q. And all those units that I mentioned, UTMB</p> <p>9 assists in the provision of medical care except for</p> <p>10 Hodge? Oh, I'm -- strike that.</p> <p>11 A. All of them, yes.</p> <p>12 Q. I may not have asked you this and -- does</p> <p>13 Hodge have 24-hour care?</p> <p>14 A. Again, we're co-located up there, Hodge and</p> <p>15 Skyview, so I'm not sure on the number of hours of</p> <p>16 care. I could have told you that several months ago,</p> <p>17 but I'm not sure right now.</p> <p>18 Q. All right. Well, we'll ask</p> <p>19 Director Stephens.</p> <p>20 Fair to say that not having 24-hour</p> <p>21 medical care at a facility denies -- well, strike</p> <p>22 that.</p> <p>23 Fair to say that not having 24-hour</p> <p>24 medical care would delay a prisoner's access to care?</p> <p>25 MS. COOGAN: Objection. Calls for</p>	<p style="text-align: right;">147</p> <p>1 are authorized to diagnose illness?</p> <p>2 A. No, sir, I do not.</p> <p>3 Q. Okay. Now, if a prisoner at the</p> <p>4 Hutchins Unit needs medical care after hours, is it</p> <p>5 true that the only way to get it there is to call 911?</p> <p>6 A. The only way to get a physical individual</p> <p>7 there to provide the care?</p> <p>8 Q. Yes.</p> <p>9 A. Again, transportation -- well, depending on</p> <p>10 the circumstances. Again, as we mentioned before, in</p> <p>11 some cases, a -- a minor medical issue that requires</p> <p>12 them to be seen from a -- a health service provider</p> <p>13 could require transport -- transportation by security</p> <p>14 staff. All emergency medical treatment of individuals</p> <p>15 would be by 911 from the local community responding.</p> <p>16 Q. Okay. So the only way to get actual medical</p> <p>17 care in the event of an emergency would be to call</p> <p>18 911. Right?</p> <p>19 MS. COOGAN: Objection. Misstates his</p> <p>20 testimony.</p> <p>21 MR. EDWARDS: No, it doesn't, but --</p> <p>22 MS. COOGAN: Well, then it's</p> <p>23 repetitive.</p> <p>24 A. Again, there is some access to medical care</p> <p>25 through the telemedicine system that we talked about.</p>
<p style="text-align: right;">146</p> <p>1 speculation.</p> <p>2 A. Again, I don't know what you would consider</p> <p>3 delay. There are mechanisms put in place for</p> <p>4 offenders to access care even during the hours after</p> <p>5 medical staff is not on -- on the facility. How long</p> <p>6 that takes to walk the individual to the infirmary, to</p> <p>7 call the medical personnel that's on call, if you're</p> <p>8 considering that a delay, I don't know how many extra</p> <p>9 minutes you add there. But, again, there is not</p> <p>10 direct access after hours, if that's what you're</p> <p>11 asking.</p> <p>12 Q. Okay. Well, let's walk through that. We've</p> <p>13 got places with 24-hour medical care on-site. Right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. That -- then you could get the inmate</p> <p>16 to the medical provider quickly. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. If you don't have that and you have</p> <p>19 to do some sort of telemedicine accommodation, it's</p> <p>20 going to delay things, who knows exactly how much, but</p> <p>21 it's not going to get the -- a medical provider there</p> <p>22 as quickly. Is that fair?</p> <p>23 A. Again, there surely could be a minimal delay</p> <p>24 in accessing that care, yes, sir.</p> <p>25 Q. Do you know if licensed vocational nurses</p>	<p style="text-align: right;">148</p> <p>1 In minor situations that surely is an option. But for</p> <p>2 emergent medical care, 911 would be the appropriate</p> <p>3 mechanism.</p> <p>4 Q. (BY MR. EDWARDS) Okay. Well, it's the only</p> <p>5 mechanism, right, to get actual emergent care to the</p> <p>6 facility. Right?</p> <p>7 A. Emergent care, yes, sir.</p> <p>8 Q. Yeah. Okay. I mean, an officer can't make</p> <p>9 a diagnosis. Right?</p> <p>10 A. No, sir.</p> <p>11 Q. Now, were you ever aware of a practice at</p> <p>12 the Hutchins Unit of not contacting 911 in the event</p> <p>13 of medical emergencies and instead contacting</p> <p>14 supervisors?</p> <p>15 A. No, sir, I was not.</p> <p>16 Q. Would that be a dangerous practice to have</p> <p>17 at any prison facility, if it existed?</p> <p>18 A. When you say, not contacting emergency</p> <p>19 medical care, contact the supervisor, can you specify?</p> <p>20 Q. Sure. Let's say somebody is having a</p> <p>21 seizure right there.</p> <p>22 A. Right.</p> <p>23 Q. And is convulsing and is nonresponsive and</p> <p>24 unable to communicate with you.</p> <p>25 A. Right.</p>

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<p style="text-align: right;">149</p> <p>1 Q. You'd agree, that's an emergency situation 2 you've got to deal with. Right? 3 A. Seizure is a serious medical situation. 4 Q. Of course. Should they, A, call their 5 supervisor and wait ten to 15 minutes for them to come 6 down and evaluate the situation; or, B, institute an 7 emergency call to 911? 8 A. Well, again, when you say, was I aware of a 9 practice, I guess I will answer it this way. In any 10 emergent situation in our institutions, supervisory 11 staff should always be available to immediately 12 respond to the area. And when I say immediately 13 respond, with the supervisory coverage we have on our 14 facilities, that should -- 15 THE VIDEOGRAPHER: Excuse me. 16 Somebody's phone is ringing. 17 A. With the supervisory staffing that we have 18 in our facility, that should occur in an emergency 19 situation, in -- immediately. Okay? As it relates to 20 the staff member making the 911 call, there is no 21 staff member inside the facility that has the 22 capabilities of -- of accessing 911. As you're 23 probably aware, they have -- in some cases they have 24 telephone access, in some cases they will be equipped 25 with a radio where they could immediately contact an</p>	<p style="text-align: right;">151</p> <p>1 that from occurring, no, sir. 2 Q. If there was a -- not a policy, but just a 3 practice, a way of doing things of just waiting until 4 your supervisor shows up before initiating the 911 5 process, would you agree with me that that could delay 6 potentially lifesaving care? 7 A. Again, in an emergency situation, I would 8 hope the supervisor would respond immediately. But, 9 indeed, if that was not happening, then -- then surely 10 that would be a situation of concern. 11 Q. Okay. Are you aware of the time delay in 12 this particular case between recognizing Mr. McCollum 13 having seizures and being nonresponsive and contacting 14 911? 15 A. I'm aware of the time, by reviewing the 16 report and discussing it with others, yes, sir. 17 Q. Okay. It's an hour delay. Right? 18 A. Just short of an hour, I believe. 19 50-something minutes, yes, sir. 20 Q. Somewhere between 50 minutes and a little 21 more than an hour, somewhere like that. Right? 22 A. Yes. 23 Q. You would agree that's off the charts 24 unacceptable in this situation. Right? 25 A. Again, in -- in reviewing the facts as they</p>
<p style="text-align: right;">150</p> <p>1 entity and say, I need the supervisor, or I need 2 emergency care. But that individual themselves would 3 have no capabilities of dialing 911. 4 Q. Sure. Let's take my example. Okay. A 5 person, seizure, nonresponsive. We've agreed he needs 6 immediate medical care. Right? 7 A. Right. 8 Q. Okay. In that situation, a correctional 9 officer is there, should they initiate the 911 10 process, or contact their supervisor, wait ten, 11 15 minutes for the supervisor to come and not initiate 12 the 911 process? 13 A. And, again, in the explanation that I gave 14 you, their first contact would be their supervisor as 15 they initiate our emergency incident response process. 16 Okay? That supervisor should immediately go to there. 17 If for some reason there is delay, that correctional 18 officer surely has the opportunity to inform that 19 supervisor by radio, we need 911, this is what I have, 20 and that process could be initiated. 21 Q. Okay. So nothing prevents, at least to your 22 knowledge, a correctional officer from initiating a 23 911 process if people -- if there is a delay in 24 getting people to help him? 25 A. There is no policy out there that prohibits</p>	<p style="text-align: right;">152</p> <p>1 were there, again, the encouragement and the direction 2 to the field is, when in doubt, seek -- seek treatment 3 for -- for the offender. 4 Q. Sure. 5 A. So in retrospect, not knowing all that the 6 staff was dealing with there, I would surely say that 7 it would have been appropriate to initiate that 911 8 call earlier, yes, sir. 9 Q. Okay. Inappropriate to not initiate that 10 911 call sooner. Right? 11 A. Well, again, looking at the circumstances as 12 I can see them now, surely would have initiated it 13 earlier, yes, sir. 14 Q. Okay. That happened in July of 2011, I 15 think July 22nd, 2011. Is that your understanding as 16 well? 17 A. I believe that was the date of the 18 occurrence, yes, sir. 19 Q. Okay. And you were notified about -- and 20 you received an EAC report and there was an 21 administrative review in which all of this situation 22 was discussed and described. Right? 23 A. Again, I don't know exactly what documents I 24 reviewed. At some point I would have been notified of 25 that, but I cannot recall exactly when that</p>

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<p>153</p> <p>1 notification took place.</p> <p>2 Q. Do you know if these officers have been</p> <p>3 disciplined for the delay in contacting 911?</p> <p>4 A. I do not know whether they have been</p> <p>5 disciplined, no, sir.</p> <p>6 Q. Should they be?</p> <p>7 A. Well, again, it's a determination that is</p> <p>8 made through the review process of the warden and the</p> <p>9 regional director, and in some cases as they review</p> <p>10 the administrative review, looking at the officers'</p> <p>11 actions afterward, they surely -- surely can criticize</p> <p>12 the fact that there was a delay in the call. I don't</p> <p>13 know that -- where any level of responsibility lies in</p> <p>14 that entire process, but there is officers out there</p> <p>15 that, as you know, make difficult decisions every day</p> <p>16 dealing with the offender population, and as to</p> <p>17 whether or not formal disciplinary should have been</p> <p>18 taken, at what level, again --</p> <p>19 Q. Well, let's change the question. Should</p> <p>20 formal retraining have been done?</p> <p>21 A. I surely believe that retraining, not only</p> <p>22 for that particular -- those particular staff members,</p> <p>23 but for staff on that facility to ensure that the</p> <p>24 correct message was out there to the staff.</p> <p>25 Q. You don't want this to happen again. Right?</p>	<p>155</p> <p>1 instructions given, the same decisions could be made,</p> <p>2 yes, sir.</p> <p>3 Q. This -- after this e-mail is sent out, I</p> <p>4 believe there has been previous testimony that --</p> <p>5 well, strike that.</p> <p>6 Are you responsible for sending out</p> <p>7 Exhibit 50 or is somebody else responsible for it?</p> <p>8 And I'm talking about that '09 to before you retired</p> <p>9 time period.</p> <p>10 A. Yeah. In most cases that would come from my</p> <p>11 office. In some cases it might have been disseminated</p> <p>12 from Mr. Stephens' office.</p> <p>13 Q. Okay. There has been testimony in this case</p> <p>14 that a circular, a risk management circular was read</p> <p>15 aloud to officers about recognizing the signs and</p> <p>16 symptoms of heat stroke and heat exhaustion. Were you</p> <p>17 aware that that was going on in -- at the</p> <p>18 Hutchins facility?</p> <p>19 A. Not -- not directly aware, but heat</p> <p>20 preparedness training, as I mentioned before, is</p> <p>21 required to be conducted on each facility, in addition</p> <p>22 to the training that the correctional staff receive as</p> <p>23 they go through their pre-service and in-service</p> <p>24 training.</p> <p>25 Q. And this training was going on from the time</p>
<p>154</p> <p>1 A. That's correct.</p> <p>2 Q. I mean, Warden Pringle ought to have had</p> <p>3 those officers in and said, look, guys, in all</p> <p>4 circumstances initiate 911 when someone is seizing and</p> <p>5 nonresponsive. Right? Whether he disciplined them or</p> <p>6 not, he should have had that conversation. Right?</p> <p>7 MR. GARCIA: Objection. Compound.</p> <p>8 Speculation.</p> <p>9 A. Again, as a warden, that's something that</p> <p>10 surely I would have done.</p> <p>11 Q. (BY MR. EDWARDS) And if you were that</p> <p>12 warden, of course you would have done that. Fair?</p> <p>13 A. Again, as a warden, I surely would have</p> <p>14 reviewed those circumstances with staff involved.</p> <p>15 Q. Do you know if Warden Pringle has done that?</p> <p>16 A. No, sir, I do not.</p> <p>17 Q. Would you be critical of Warden Pringle if</p> <p>18 he had not had those conversations with his officers?</p> <p>19 A. Again, I would -- I would hope that subject</p> <p>20 matter relating to those incidents and dealing with</p> <p>21 those incidents was covered with all staff, to include</p> <p>22 those officers, by Warden Pringle.</p> <p>23 Q. Okay. Otherwise, nothing changes and you're</p> <p>24 destined to repeat your failures. Right?</p> <p>25 A. Surely if there is not additional</p>	<p>156</p> <p>1 you started your job as director of Correctional</p> <p>2 Institutions Division. Right?</p> <p>3 A. As far as I know, training -- yes.</p> <p>4 Q. It wasn't in response to this epidemic of</p> <p>5 heat deaths in 2011, was it?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. So you would expect that your</p> <p>8 officers to be well versed in what the signs and</p> <p>9 symptoms of recognizing heat stroke are. Right?</p> <p>10 A. We surely try to ensure that they are</p> <p>11 appropriately trained, and an additional step that is</p> <p>12 taken is, they are provided a card that they carry on</p> <p>13 person which would identify those signs for them.</p> <p>14 Q. Certainly you would expect Warden Pringle to</p> <p>15 understand what the signs and symptoms of heat stroke</p> <p>16 are. Right?</p> <p>17 A. Generally, yes, sir.</p> <p>18 Q. If he had no idea what they were, would that</p> <p>19 trouble you?</p> <p>20 A. Well, again, I would think he would have</p> <p>21 some general idea, but -- because --</p> <p>22 Q. You certainly would hope that he would have</p> <p>23 a general idea. Right?</p> <p>24 A. Sure.</p> <p>25 Q. Okay. I agree. If he didn't, would that</p>

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<p style="text-align: right;">157</p> <p>1 trouble you, since he is running a prison with 2 extremely hot temperatures inside? 3 A. Again, it would surely be a training 4 opportunity forward, yes, sir. 5 Q. That's a bit of an understatement. Correct? 6 A. It's a statement, yes, sir. 7 Q. Okay. It's -- fair enough. 8 Who is responsible for making sure that 9 correctional officers receive this training at the 10 individual facilities? We'll start with Hutchins? 11 A. Again, the administrator on the facility is 12 ultimately responsible for ensuring that the training 13 is conducted. And he would utilize his department 14 heads and his security supervisors to provide that 15 training in conjunction, in many cases, with health 16 service staff. 17 Q. There has been testimony that this circular, 18 I think it's like three or four pages, was read 19 aloud -- you may have noticed this in one of the 20 depositions -- was simply read aloud to the officers. 21 Do you think that that is effective training? 22 A. Well, again, there are different kind of 23 training techniques. Getting up in front of a -- an 24 audience and with the information dissemination surely 25 is one way. I would hope that we supplement that with</p>	<p style="text-align: right;">159</p> <p>1 These wellness checks that you 2 instituted after the summer of 2011, what is an -- 3 what is your understanding of what an officer is 4 supposed to look for? 5 A. Again, that was just an additional step that 6 was put in place as -- as, in general, through the 7 seasonal period as they made their rounds, the process 8 that was in place prior to the wellness check was, 9 basically, they did a general overview. If indeed 10 they happened to be making their rounds and saw 11 somebody in distress or somebody symptomatic of 12 heat-related illness, then they surely would bring 13 that to the attention of medical staff for appropriate 14 treatment. 15 The contact -- the direct contact with 16 these individuals just ensured if an individual was 17 lying on his bunk, if an individual was in distress 18 and might not notice by an idle round through the 19 dorm, that the officer would make some contact with 20 that individual, get some response, and -- and have 21 some opportunity, just as an -- an additional stopgap 22 measure to identify anybody that might be struggling. 23 Q. Okay. Is that an accommodation that TDCJ 24 has chosen to provide for its population that is 25 vulnerable to heat illness?</p>
<p style="text-align: right;">158</p> <p>1 situational and example training. I'm hoping that 2 since that subject matter was covered repeatedly 3 throughout the seasonal months that that wasn't the 4 only opportunity for shift supervisors to discuss 5 heat-related illness issues with their staff and signs 6 and symptoms of such. 7 Q. Okay. This was such a pervasive issue and 8 such a concern of yours as the director of the 9 Correctional Institutions Division that you made sure 10 that there was lots of training and lots of 11 opportunities for people to understand, heat stroke is 12 a problem and you need to be able to recognize it 13 right away? 14 A. Again -- 15 Q. True? 16 A. We put that information out there to ensure 17 that we could respond appropriately, yes, sir. 18 Q. And we'll go through some -- the minutes 19 from these regional director meetings. It appears 20 that heat awareness is something that is discussed 21 consistently throughout the course of your tenure. Is 22 that your memory as well? 23 A. Surely during those seasonal months, yes, 24 sir. 25 Q. Okay. Fair enough.</p>	<p style="text-align: right;">160</p> <p>1 A. Again, that's a -- a procedure that we have 2 put in place to assist those individuals that might be 3 vulnerable to heat-related illnesses, and in many 4 cases those contacts are made repeatedly throughout 5 the seasonal period -- or the majority without any -- 6 any indication of issue. But, again, it's an extra 7 opportunity for us to ensure that we're making some 8 communication with the population, giving them an 9 opportunity to indicate to us should they be 10 struggling or having any symptoms. 11 Q. Sure. Anything prevent you from putting 12 that into place in the -- in 2010? 13 A. No, sir. 14 Q. Okay. Why didn't you put it into place in 15 2010? 16 A. Again, as we evaluated the incidents that 17 occurred in 2011, this is a -- an additional step that 18 we're taking to, hopefully, ensure that we're bringing 19 extra awareness to staff's attention out there, making 20 sure that as they make their rounds, although, again, 21 it's repeatedly discussed in shift briefings, that 22 that is constantly on their mind as they make their 23 rounds. As we went through 2010, there was no 24 indication to me or others that our identification 25 process of these illnesses wasn't sufficient to</p>

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<p style="text-align: right;">161</p> <p>1 address the issue.</p> <p>2 Q. There was no identification process, though,</p> <p>3 was there, sir?</p> <p>4 A. When I say identification process, I'm</p> <p>5 referring to the ability to identify somebody that was</p> <p>6 in distress, not identifying those that might be</p> <p>7 susceptible to heat-related illness. Okay? There was</p> <p>8 no information besides maybe work restrictions on a</p> <p>9 work roster that would allow a dorm officer to know</p> <p>10 who had any of those illnesses. So our attempt, after</p> <p>11 2011, was to, again, use the resources that I had</p> <p>12 immediately available to me, which is our staff that</p> <p>13 patrols those areas, to work with Doctor Linthicum to</p> <p>14 ensure that we put forth that extra effort and made</p> <p>15 contact with these individuals as they made their</p> <p>16 security rounds.</p> <p>17 Q. Okay. And while I guess you hadn't suffered</p> <p>18 through ten deaths in one summer, you had had people</p> <p>19 die from heat stroke in your custody due to -- with</p> <p>20 heat-sensitive vulnerabilities. Correct?</p> <p>21 A. Well, again, I -- I don't -- I'm not purview</p> <p>22 to that information. Surely there are individuals in</p> <p>23 our system that -- that die every year for a multitude</p> <p>24 of health reasons. But, again, those -- to my</p> <p>25 knowledge, those deaths were not related to this</p>	<p style="text-align: right;">163</p> <p>1 MR. GARCIA: Objection. Asked and</p> <p>2 answered.</p> <p>3 Q. (BY MR. EDWARDS) Right?</p> <p>4 A. Again, the --</p> <p>5 MR. GARCIA: Objection. Asked and</p> <p>6 answered.</p> <p>7 Q. (BY MR. EDWARDS) Right? Of course.</p> <p>8 A. Again, the --</p> <p>9 Q. Was that, yes?</p> <p>10 A. No. I said, again, surely was aware that</p> <p>11 through health service direction they had identified</p> <p>12 certain illnesses that were more susceptible to</p> <p>13 heat-related illnesses, yes, sir.</p> <p>14 Q. Okay. Do you recall any -- any discussion</p> <p>15 about speeding up the process of getting prisoners on</p> <p>16 this wellness checklist during the summer of 2011?</p> <p>17 A. Again, discussions concerning the wellness</p> <p>18 checklists took place, the best of my recollection --</p> <p>19 and, again, I could be off -- would have been towards</p> <p>20 the end of 2000 -- the summer of 2011. And most of</p> <p>21 those discussions and surely the decision to implement</p> <p>22 that checklist was implemented as we rolled into the</p> <p>23 seasonal period in 2012.</p> <p>24 Q. Just so I'm clear. Is that decision made to</p> <p>25 put someone on that heat checklist made by the initial</p>
<p style="text-align: right;">162</p> <p>1 particular issue.</p> <p>2 Q. Okay. Well, do you know the circumstances</p> <p>3 between the death of James Shriver at the Byrd Unit,</p> <p>4 on August 8th, 2007?</p> <p>5 A. No, sir, I do not.</p> <p>6 Q. Do you know the circumstances of Dioncio</p> <p>7 Robles's death at the Byrd Unit on August 13th, 2007?</p> <p>8 A. No, I do not.</p> <p>9 Q. Okay. You haven't -- well, so you don't</p> <p>10 know whether or not those are heat-related</p> <p>11 hyperthermia deaths?</p> <p>12 A. Well, again, from the discovery there, I --</p> <p>13 I see --</p> <p>14 Q. Prior to today, you didn't know that?</p> <p>15 A. Well, when I reviewed that document.</p> <p>16 Q. Okay.</p> <p>17 A. So...</p> <p>18 Q. But when you say you didn't have access,</p> <p>19 certainly, as the director of the criminal institution</p> <p>20 division, certainly you had the ability to find out,</p> <p>21 didn't you?</p> <p>22 A. Sure. Sure.</p> <p>23 Q. Okay. And certainly you were aware of the</p> <p>24 dangers that heat posed to people with particular</p> <p>25 illnesses or disabilities. Right?</p>	<p style="text-align: right;">164</p> <p>1 UTMB nurse or licensed vocational nurse seeing the</p> <p>2 inmate the first time, or by the person who does the</p> <p>3 intake physical, whenever that happens, three, four,</p> <p>4 seven, ten days later?</p> <p>5 A. Again, as I discussed with Doctor Linthicum,</p> <p>6 anybody that the health service wants to place on that</p> <p>7 list, can be placed on that list. So it was my intent</p> <p>8 that anybody on the facility that Health Services</p> <p>9 Division determined might be susceptible to</p> <p>10 heat-related illness would be on that list.</p> <p>11 Q. Immediately upon entry into the facility or</p> <p>12 after they get their intake physical?</p> <p>13 A. Well, again, if there were individuals that</p> <p>14 need to be placed on that list because of the triage</p> <p>15 initially into the facility, then -- then surely there</p> <p>16 was nothing that I know that prohibited health</p> <p>17 services from putting them on that list for -- to be</p> <p>18 checked on.</p> <p>19 Q. Do you know if the LVNs were instructed</p> <p>20 about this?</p> <p>21 A. I can't --</p> <p>22 Q. Putting people on the list right away?</p> <p>23 A. I cannot speak to that.</p> <p>24 Q. Do you know if Rodney Adams was put on this</p> <p>25 list right away?</p>

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<p style="text-align: right;">165</p> <p>1 A. I cannot speak to that.</p> <p>2 Q. Do you know if Albert Hinojosa was put on</p> <p>3 this list?</p> <p>4 A. No, sir, I do not know.</p> <p>5 Q. Would you acknowledge that there would be a</p> <p>6 problem if you didn't put people with heat-sensitive</p> <p>7 disabilities or vulnerabilities on a heat list right</p> <p>8 away, and waited the three, four, or seven days before</p> <p>9 they get an intake physical?</p> <p>10 MR. GARCIA: Objection. Speculation.</p> <p>11 Q. (BY MR. EDWARDS) From a correctional</p> <p>12 standpoint?</p> <p>13 A. Well, again, we would be relying on the</p> <p>14 system that was in place prior to the implementation</p> <p>15 of the wellness checklist, and that would be relying</p> <p>16 on the correctional staff working that area to</p> <p>17 identify an offender that would be -- was in distress</p> <p>18 or having problems. As I mentioned earlier, one of</p> <p>19 the struggles with the developing the wellness</p> <p>20 checklist was to encourage our staff or train our</p> <p>21 staff not to just focus on the wellness checklist,</p> <p>22 because -- just because an individual might not be</p> <p>23 susceptible or have a condition that would make them</p> <p>24 susceptible to heat-related illness, it does not</p> <p>25 prevent them from experiencing a heat-related illness.</p>	<p style="text-align: right;">167</p> <p>1 identified, but adding that individual to the list</p> <p>2 would surely allow for additional scrutiny by security</p> <p>3 staff as they make their rounds.</p> <p>4 Q. Better to identify it right away, because</p> <p>5 there is no more protection and the benefit of</p> <p>6 identifying and protecting the inmate actually occurs?</p> <p>7 A. Well, again, it sure would be -- give us an</p> <p>8 opportunity to interact with that inmate --</p> <p>9 Q. Sure.</p> <p>10 A. -- directly each time that we made our</p> <p>11 rounds.</p> <p>12 Q. And you're not saying that you need this</p> <p>13 wellness checklist in order for officers to</p> <p>14 appropriately respond to people who are showing signs</p> <p>15 and symptoms of heat illness. Right? That's the</p> <p>16 whole point of all your training that you do. Right?</p> <p>17 MR. GARCIA: Objection. Compound.</p> <p>18 A. Again, the officers are trained to identify</p> <p>19 those illnesses. This wellness checklist was put in</p> <p>20 place just as an additional measure to -- to identify</p> <p>21 those struggling that might have a higher propensity</p> <p>22 to those illnesses.</p> <p>23 Q. (BY MR. EDWARDS) If Mr. McCollum was, in</p> <p>24 fact, struggling for a period of days, and inmates</p> <p>25 told officers about this, should they have gotten him</p>
<p style="text-align: right;">166</p> <p>1 So, again, what we would have had to rely on, if that</p> <p>2 indeed occurred, was for the staff member to identify</p> <p>3 that individual through their normal rounds, in</p> <p>4 addition to those that they were identifying through</p> <p>5 the wellness checklist.</p> <p>6 Q. Okay.</p> <p>7 MR. EDWARDS: Let me object as</p> <p>8 nonresponsive.</p> <p>9 Q. (BY MR. EDWARDS) And my question is a</p> <p>10 little different, sir. It's -- if there -- if the</p> <p>11 person is not put on a wellness checklist right away</p> <p>12 by that initial nurse, okay, and instead, they're put</p> <p>13 on it later, when they have an intake physical,</p> <p>14 however many days, four, five, six, whatever days</p> <p>15 away, do you see a problem from trying to manage this</p> <p>16 pro -- this situation, do you see a problem that could</p> <p>17 occur?</p> <p>18 A. Sure. And the intent was to place the</p> <p>19 individual on the list so they receive the</p> <p>20 additional -- the additional checks and additional</p> <p>21 scrutiny. Now, again, although we put that wellness</p> <p>22 checklist in place here within the last year, we</p> <p>23 functioned with our correctional staff identifying</p> <p>24 those issues for many years prior to that. So, again,</p> <p>25 there would still be a mechanism there for that to be</p>	<p style="text-align: right;">168</p> <p>1 to see the medical provider at the facility?</p> <p>2 A. Surely if any staff member received</p> <p>3 information that any offender needed medical</p> <p>4 attention, they should have checked on that offender</p> <p>5 and referred that individual to -- to the health</p> <p>6 services department.</p> <p>7 Q. Okay.</p> <p>8 MR. EDWARDS: All right. We've got two</p> <p>9 minutes left on the tape. Let's take a short break</p> <p>10 and then we'll dive into your director meetings.</p> <p>11 MR. GARCIA: How much more have you</p> <p>12 got?</p> <p>13 MR. EDWARDS: The 12 director meetings.</p> <p>14 About an hour, I think.</p> <p>15 THE VIDEOGRAPHER: Let's go off the</p> <p>16 record. We're off the record at 1:10 p.m.</p> <p>17 (LUNCH RECESS)</p> <p>18 THE VIDEOGRAPHER: We're back on the</p> <p>19 record. The time is 2:16 p.m.</p> <p>20 Q. (BY MR. EDWARDS) Sir, we've taken a short</p> <p>21 break for lunch. Are you ready to continue?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. We were talking a little bit about</p> <p>24 the wellness checklist that I believe you told me was</p> <p>25 implemented towards the end or at least after the</p>

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<p>169</p> <p>1 summer of 2011?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Regional Director Eason testified, I</p> <p>4 believe, that that was a policy that you, in fact,</p> <p>5 began. Is that correct? That's how I understood it</p> <p>6 as well.</p> <p>7 A. Again, that was in consultation with</p> <p>8 Doctor Linthicum, but that was surely something that</p> <p>9 began during my tenure, yes, sir.</p> <p>10 Q. Did you discuss that with Executive Director</p> <p>11 Livingston as well?</p> <p>12 A. I'm sure that I briefed him on steps that we</p> <p>13 were taking to address the issues as we moved forward.</p> <p>14 The wellness checklist was one of those items that was</p> <p>15 outlined.</p> <p>16 Q. Okay. So fair to say that you may have had</p> <p>17 primary responsibility for dealing with the issues in</p> <p>18 the prison, but you would brief Director Livingston</p> <p>19 and -- and coordinate a response?</p> <p>20 A. Surely would brief Mr. Livingston on what</p> <p>21 actions were taking place to address particular</p> <p>22 issues, yes, sir.</p> <p>23 Q. I guess what I'm -- did he let you do</p> <p>24 whatever you wanted with regards to how you ran the</p> <p>25 Correctional Institutions Division or did he -- or</p>	<p>171</p> <p>1 I'll ask one more question.</p> <p>2 A. No, sir, not to my recollection. Not</p> <p>3 directly.</p> <p>4 Q. What about just cooling mechanisms, just</p> <p>5 getting the temperature down to kind of a livable</p> <p>6 level?</p> <p>7 A. Again, in general, we had discussions about</p> <p>8 actions that were being initiated. I don't recall</p> <p>9 specific conversations about cooling mechanisms in the</p> <p>10 dormitories or in the housing areas.</p> <p>11 Q. Okay. To your knowledge, is anything done</p> <p>12 to make sure that prisoners on the list for wellness</p> <p>13 checks get to go to an air conditioned part of the</p> <p>14 prison to cool off?</p> <p>15 A. Again, that's a -- a subject that was</p> <p>16 discussed generally that has not been included in the</p> <p>17 e-mail dissemination to this point. But many</p> <p>18 facilities use that as an avenue to provide an area</p> <p>19 for those individuals that showed any signs of</p> <p>20 heat-related illness. In most cases, surely during</p> <p>21 the hours of operation of the infirmary, the infirmary</p> <p>22 would have been the preferred place to take that</p> <p>23 individual so that he could have been evaluated by</p> <p>24 health service staff. And then, again, if it was</p> <p>25 necessary to allow that individual some relief through</p>
<p>170</p> <p>1 would he -- or could he say, you know what, I don't</p> <p>2 think we should do that?</p> <p>3 A. Surely as executive director, he had the</p> <p>4 ability to instruct me to go a certain direction.</p> <p>5 Q. Okay. Certainly he had the ability to</p> <p>6 implement policies along with you. Correct?</p> <p>7 A. He has the policy making ability, yes, sir.</p> <p>8 Q. Okay. He could have instituted security</p> <p>9 memorandums along with you, or had you do that.</p> <p>10 Correct?</p> <p>11 A. Again, he -- those memorandums would have</p> <p>12 been generated out of my office as the division</p> <p>13 director over the Correctional Institutions Division,</p> <p>14 but if -- felt there was a need and that was pointed</p> <p>15 out by Mr. Livingston, it surely would have been</p> <p>16 looked at and addressed.</p> <p>17 Q. Okay. And he certainly could have ordered a</p> <p>18 study as to how much air conditioning or cooling a</p> <p>19 unit would cost. Right?</p> <p>20 A. He could have ordered that, yes, sir.</p> <p>21 Q. Okay. Did you guys ever discuss whether you</p> <p>22 should do that?</p> <p>23 A. A study particularly dealing with air</p> <p>24 conditioning in all of the rest of the facilities?</p> <p>25 Q. Let's start with air conditioning, and then</p>	<p>172</p> <p>1 that method, then the infirmary would have been an</p> <p>2 appropriate place to leave that offender for whatever</p> <p>3 period of time, in a holding area more than likely.</p> <p>4 Q. Okay. As I listen to you talk, it sounds</p> <p>5 like there is no formal instruction that you need to</p> <p>6 get people on this wellness list into areas that are</p> <p>7 air conditioned for at least a couple of hours a day.</p> <p>8 Is that fair?</p> <p>9 A. To this point to my knowledge there is no</p> <p>10 formal instruction about a requirement to get all</p> <p>11 individuals on that list into a specific area in</p> <p>12 any -- during any particular day, yes, sir.</p> <p>13 Q. Now, one consequence of there not being any</p> <p>14 formal instruction would be, does that leave it to the</p> <p>15 discretion of the wardens how to deal with whether or</p> <p>16 not inmates are going to be allowed to go to cooler</p> <p>17 places?</p> <p>18 A. Well, again, besides general instructions</p> <p>19 out to the field that it does allow the</p> <p>20 decision-making process at the warden level as to what</p> <p>21 is appropriate for their particular facility, yes,</p> <p>22 sir, it does.</p> <p>23 Q. Okay. Is there any -- is there any reason</p> <p>24 why -- let's use the Hutchins Unit -- couldn't use</p> <p>25 some of the spaces that are air conditioned in the</p>

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<p style="text-align: right;">173</p> <p>1 housing areas as -- call them respite areas or to get 2 out of the heat? 3 A. Again, on some facilities there are some 4 areas that could be used for respite areas. That 5 would be more difficult on other facilities. Again, 6 there is nothing that restricts any warden from 7 utilizing whatever resources they have available. 8 On -- on most facilities there are no respite areas 9 immediately in the housing area vicinity, but on 10 Hutchins, there -- there I believe are -- there are a 11 couple. 12 Q. There are some rooms, if I'm remembering my 13 visit there. 14 A. I believe in testimony there was a 15 multi-purpose room that was referenced. 16 Q. Okay. It certainly would be reasonable to 17 let an inmate have access to that room, in your 18 opinion? 19 A. That is a -- surely a mechanism by which 20 unit administrations can help, again, mitigate the 21 heat factors during the summer months. 22 Q. Certainly that would have been an option 23 back in 2011 when Mr. McCollum was at the 24 Hutchins Unit, if made known to him. Correct? 25 A. Well, yeah. Again, as it relates to respite</p>	<p style="text-align: right;">175</p> <p>1 Executive Director. 2 Q. And it is my understanding that you wrote 3 this letter. 4 A. No, sir, I did not. 5 Q. Okay. Did Mr. Livingston write this letter, 6 then, to the best of your knowledge? 7 A. I could not speak to who wrote this letter. 8 Q. Is that his signature? 9 A. I would assume it's his signature. 10 Q. Have you ever seen his signature before? 11 A. I have, but to be honest with you, I don't 12 recall what it looks like. 13 Q. All right. Okay. Well, at least in this 14 letter it looks like Mr. Livingston is talking about 15 system-wide protocols and what the -- the system is 16 doing to protect inmates from the dangers of heat. Is 17 that your -- is that a fair reading of this document? 18 A. I'm reading over it. 19 That appears to be what is being 20 addressed. 21 Q. Since you did not author this, I guess would 22 it be better for us to ask questions of Director 23 Livingston about this letter? 24 A. I don't know who would be better to offer -- 25 to ask the questions of, but I can't tell you who</p>
<p style="text-align: right;">174</p> <p>1 areas, at that time, most of those offenders would 2 have been taken to the unit infirmary, but it surely 3 could have been available, yes, sir. 4 Q. Would you agree that one important part of 5 having any sort of, I don't know, respite area would 6 be communicating to the inmates that if they're 7 feeling symptoms of exhaustion or being overcome by 8 heat that they could go there? 9 A. Communicating general information as it 10 relates to signs and symptoms of heat-related illness, 11 in addition to any mechanisms they had to address 12 those issues would be appropriate. 13 Q. Okay. It is true, though, that the -- the 14 ability go to respite areas with air conditioning was 15 never communicated to prisoners at the Hutchins Unit 16 prior to the end of the summer of 2011. Correct? 17 A. I don't have any knowledge as to whether 18 that was or not. 19 Q. Okay. Sir, let me show you Exhibit 52. 20 (Deposition Exhibit No. 52 marked.) 21 Q. (BY MR. EDWARDS) Would you identify that for 22 the jury, please. 23 A. This is a communication dated August 16th, 24 2011, addressed to the Honorable Sylvester Turner, 25 Texas State Representative, signed by Brad Livingston,</p>	<p style="text-align: right;">176</p> <p>1 authored this. 2 Q. In order for him to have written this, he 3 would have had to have gathered this information. 4 Would you agree with me? 5 A. I agree. 6 Q. And do you know who he would have gathered 7 this information from, if not you? 8 A. Well, I would -- I would say that part of 9 this information relating to processes we had in place 10 and procedures that we had in place appear to come 11 directly from -- from the communication that we sent 12 out annually. I know that there have been occasions 13 when I have discussed the issue with Mr. Livingston's 14 chief of staff, heat-related issues, should we get any 15 inquiry from the legislature. So that very well could 16 have occurred that I spoke with Mr. Baldwin concerning 17 this subject matter, but as to who drafted this 18 letter, I can't speak to that. 19 Q. Tell me about the conversations you've had 20 with Mr. Baldwin concerning heat-related questions or 21 issues? 22 A. Again, to the best of my recollection, I 23 seem to recall having a -- a discussion in reference 24 to questions from Mr. Turner's office. Those general 25 discussions would have been similar to most</p>

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<p style="text-align: right;">177</p> <p>1 discussions that I had with Mr. Baldwin when he called 2 and asked for a description of practices in place or 3 policies in place within my division, and I would have 4 supplied him a general overview or, in some cases, a 5 copy of the -- a copy of the appropriate document that 6 covered that subject matter. 7 Q. Which would have been what? 8 A. Well, from reading this document, I -- I 9 don't remember, but it appears that a lot of this 10 information would have come from that initial memo, 11 not all. Mr. Baldwin could have gathered some of this 12 information from other entities if he was the one that 13 would have drafted this. 14 Q. Okay. Do you have any idea what he is 15 talking about -- and I'm presuming Mr. Livingston 16 wrote this, but in the document that he signed, 17 working with the Facilities Division to maximize all 18 ventilation systems. 19 If you don't know what he is talking 20 about, please just tell me you don't know. 21 A. Again, I don't know directly what he is 22 referencing. 23 Q. Okay. Would you agree with me that the 24 system-wide protocols that were and will continue to 25 remain in place, at least listed in Mr. Livingston's</p>	<p style="text-align: right;">179</p> <p>1 Q. Sure. 2 MR. EDWARDS: Would you actually repeat 3 the exact question so I don't... 4 (The reporter read back requested text.) 5 MR. GARCIA: Objection, speculation. 6 Objection, vague as to "cooling mechanisms." 7 A. Again, the decision to place, as you 8 referenced, cooling mechanisms in all housing areas 9 within the Texas Department of Criminal Justice would 10 surely have to be discussed to include resource 11 availability to ensure that that could be done. 12 Q. (BY MR. EDWARDS) Okay. If it could be 13 done? 14 A. It's mechanically possible to install 15 cooling mechanisms, I would assume, but I'm not a 16 facilities engineer in those housing areas. 17 Q. You would assume that you could eliminate 18 extreme heat inside. Right? 19 A. I would assume that you could affect the 20 temperature inside housing areas by installation of 21 cooling systems. 22 Q. Sure. I mean, the warden's office doesn't 23 suffer from extreme heat, does it, in any of your 24 facilities? 25 A. Not to my knowledge.</p>
<p style="text-align: right;">178</p> <p>1 letter to the Honorable Sylvester Turner, have 2 absolutely nothing to do with lowering the temperature 3 in the housing areas? 4 A. The subject matter in this letter, from 5 briefly reading over it, appears to cover those issues 6 that we have discussed concerning efforts to ensure 7 the offender population is hydrated, to ensure that 8 they're offered showers, to ensure that we are working 9 with the Facilities Division. And also talks about 10 the -- some efforts that are made to ensure safe 11 transfer of offenders. 12 Q. Okay. It deals with the mitigation of this 13 extreme heat, not the elimination of the extreme heat. 14 Right? 15 A. It is with the mitigation factors, yes, sir. 16 Q. And not the elimination. Right? 17 A. I don't see anywhere where elimination is 18 mentioned in this document. 19 Q. Okay. Well, I mean, I just want to -- we 20 could -- strike that. 21 The Texas Department of Criminal 22 Justice could eliminate extreme heat in the housing 23 areas by placing cooling mechanisms inside the housing 24 areas. Right? 25 A. Can you repeat your question?</p>	<p style="text-align: right;">180</p> <p>1 Q. Your office doesn't suffer from extreme 2 heat, does it? 3 MR. ANASTASIDIS: Objection. It's 4 argumentative and irrelevant. 5 MR. GARCIA: And asked and answered. 6 A. And I don't have an office, but... 7 Q. (BY MR. EDWARDS) When did you, your office 8 when you were the Correctional Institutions Division 9 director, it never suffered from extreme heat, did it? 10 MR. GARCIA: Objection -- 11 MR. ANASTASIDIS: Renew the objection 12 for relevancy. 13 MR. GARCIA: Asked and answered. 14 A. Again, no, sir. 15 Q. (BY MR. EDWARDS) Okay. The armory at the 16 Hutchins Unit where the guns and bullets are stored, 17 that never suffered from extreme heat because it's air 18 conditioned. Right? 19 A. It is. 20 Q. I would assume that you would tell me that 21 the guns and the bullets are not as important as 22 protecting the inmates. Is that fair? 23 A. I would surely say that the safety of the 24 offender population takes top priority in our system. 25 I would also say that ensuring that the armory weapons</p>

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<p style="text-align: right;">181</p> <p>1 are functioning properly is important to providing the 2 safety and well-being of the citizens of Texas. 3 Q. Sure. Air conditioning the armory may very 4 well be important, but if you're evaluating it, you 5 would tell the jury that it's not as important as 6 protecting the safety and the welfare of the inmate 7 population which is in your custody. Fair? 8 MR. GARCIA: Objection. Speculation. 9 A. Again -- 10 Q. (BY MR. EDWARDS) Your opinion? 11 A. Worded as that, the welfare of the offender 12 population, no, weapons are not as important. Again, 13 separate question from air conditioning. 14 Q. I appreciate that. 15 A. Okay. 16 Q. And in the letter from Mr. Livingston, he 17 writes that the TDCJ understands its responsibility 18 and is committing to ensuring the safety and welfare 19 of our staff and offenders. 20 Do you agree with that? 21 A. Yes, sir. 22 Q. Do you think any reasonable and responsible 23 policy maker at the Texas Department of Criminal 24 Justice -- and I include you, Director Stephens and 25 Director Livingston -- ought to adhere to that?</p>	<p style="text-align: right;">183</p> <p>1 A. Again, I would -- 2 Q. (BY MR. EDWARDS) In your opinion? 3 A. I would assume that Mr. Livingston had 4 continued conversations with the legislative officials 5 and wouldn't assume that this is the only discussion 6 that he had. 7 Q. All right. Well, that's a good point. 8 Based on your knowledge of Director Livingston and 9 policy making functioning at the department, with the 10 legislature, fair to say that this is not the -- this 11 is not the only discussion that Director Livingston 12 and his staff would have had with members of the 13 legislature about heat-related issues? 14 MR. GARCIA: Objection. Speculation. 15 A. Again, I would -- 16 Q. (BY MR. EDWARDS) Based on your knowledge? 17 A. I would be speculating. I don't know of any 18 specific other discussion that any individual had, but 19 I would presume that there might have been some. 20 Q. You would expect there to be continuing 21 discussion about this issue because of its import? 22 MR. GARCIA: Objection. Speculation. 23 A. Again, that would have to be an assumption. 24 Q. (BY MR. EDWARDS) Okay. Did you have 25 ongoing conversations with members of the legislature</p>
<p style="text-align: right;">182</p> <p>1 A. Yes, sir. 2 Q. And he writes, after discussing, the agency 3 has taken a number of actions to mitigate the impact 4 of extreme heat. That it will continue to examine any 5 means that may provide further assistance. 6 Do you see that? 7 A. Yes, I do. 8 Q. Okay. Even after 14 deaths since 2007, 9 you're still not aware of an examination of air 10 conditioning these housing areas? 11 A. I'm not aware of a study to determine the 12 probability of air conditioning all housing areas, no, 13 sir. 14 Q. Anywhere in this letter to Representative 15 Turner does it discuss the knowledge on the part of 16 TDCJ that ten people died -- excuse me -- as of this 17 date, nine people died of hyperthermia while in your 18 custody, any mention of that? 19 A. It's not mentioned in this letter, no, sir. 20 Q. Do you think that that would be important 21 for a legislator or a policy maker to know when 22 evaluating whether or not the department is doing 23 enough to protect the inmates from the dangers of 24 extreme heat? 25 MR. GARCIA: Objection. Speculation.</p>	<p style="text-align: right;">184</p> <p>1 or Mr. Livingston and staff about the -- about 2 heat-related issues in the system? 3 A. Yes, sir, I did. As outlined earlier, yes, 4 sir. 5 Q. Okay. Thank you. 6 Thank you, sir. Would you tell the 7 jury briefly -- and, again, I do apologize, you may 8 have discussed this for a moment before -- but the 9 purpose of the directors meetings that you earlier 10 talked about that you had on a monthly basis? 11 MR. GARCIA: Objection. Asked and 12 answered. 13 A. Again, it was common practice for me as a 14 division director to hold a monthly meeting. That 15 monthly meeting would have been attended by the deputy 16 directors within the Correctional Institutions 17 Division, the regional directors within the 18 institutional -- Correctional Institutions Division, 19 training director, department heads, and some division 20 directors, at least for portions of that meeting, to 21 discuss subject matter at that particular time, and in 22 some cases give them an opportunity to discuss issues. 23 Q. Were attendance lists kept at these 24 meetings? 25 A. I don't know that there is an attendance</p>

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<p style="text-align: right;">185</p> <p>1 roster out there.</p> <p>2 Q. Okay. Is there any way that you can think</p> <p>3 of where I could determine who was at the particular</p> <p>4 meetings other than, you know, the list of the agenda</p> <p>5 of who may be speaking?</p> <p>6 A. I don't know that there is. There is a --</p> <p>7 in many cases, a few division directors or department</p> <p>8 heads on the agenda, and in most cases we had</p> <p>9 representation from most all divisions at the</p> <p>10 meetings. So unless they played a role in delivering</p> <p>11 a -- some particular subject matter that month, their</p> <p>12 name necessarily would not appear on that agenda. And</p> <p>13 then I don't know of any -- any roster -- surely there</p> <p>14 wasn't one in any of my possession that would have</p> <p>15 outlined exactly who was there at those meetings.</p> <p>16 Q. Okay.</p> <p>17 (Deposition Exhibit No. 53 marked.)</p> <p>18 Q. (BY MR. EDWARDS) Is Exhibit 53 a copy of the</p> <p>19 agenda for the regional directors meeting from</p> <p>20 July 16th, 2010?</p> <p>21 A. This is a copy of Mr. Stephens' portion of</p> <p>22 the regional directors meeting, yes, sir.</p> <p>23 Q. Okay.</p> <p>24 MR. ANASTASIDIS: Do y'all have an</p> <p>25 extra copy of that?</p>	<p style="text-align: right;">187</p> <p>1 A. No, sir, it's not.</p> <p>2 Q. All right.</p> <p>3 MR. EDWARDS: Well, let's go off the</p> <p>4 record for a second.</p> <p>5 THE VIDEOGRAPHER: Going off the video?</p> <p>6 MR. EDWARDS: Yes, if that's all right</p> <p>7 with everyone.</p> <p>8 THE VIDEOGRAPHER: We're off the record</p> <p>9 at 2:42 p.m.</p> <p>10 (OFF THE RECORD.)</p> <p>11 THE VIDEOGRAPHER: We're back on the</p> <p>12 record at 2:43 p.m.</p> <p>13 MR. EDWARDS: And just so the record is</p> <p>14 clear, Director Thaler has identified that there are</p> <p>15 additional records that he would have authored, and</p> <p>16 you know, myself and Mr. Medlock will go back and see</p> <p>17 if they're in the documents that have already been</p> <p>18 produced. And if not, we will confer with Demetri --</p> <p>19 I would be more respectful, but I'll butcher your last</p> <p>20 name -- and arrange for -- and arrange for those</p> <p>21 documents to be produced at a later time. Fair</p> <p>22 enough?</p> <p>23 MR. ANASTASIDIS: We'll be happy to</p> <p>24 look for them.</p> <p>25 MR. EDWARDS: Okay.</p>
<p style="text-align: right;">186</p> <p>1 MR. EDWARDS: Oh, yeah. Sorry.</p> <p>2 Q. (BY MR. EDWARDS) Okay. Would you have</p> <p>3 another portion of -- I mean, Mr. Stephens was your</p> <p>4 subordinate at the time?</p> <p>5 A. Correct.</p> <p>6 Q. Would there be a different set of notes or</p> <p>7 documents pertaining to you, sir?</p> <p>8 A. There would in most cases be a secondary</p> <p>9 agenda of topics that I would have produced.</p> <p>10 Q. Okay. Would you flip to page two of that.</p> <p>11 Is that -- is that the secondary agenda or is that</p> <p>12 still --</p> <p>13 A. No, sir. No, sir. These are actually just</p> <p>14 notes from -- from this agenda.</p> <p>15 Q. Okay. So in addition to -- at least with</p> <p>16 Exhibit 53, the notes on these agenda, were these, to</p> <p>17 the best of your knowledge, crafted by Mr. Stephens?</p> <p>18 A. To my knowledge, I -- I could not tell you</p> <p>19 who crafted these notes.</p> <p>20 Q. Okay. Is that your signature -- or is that</p> <p>21 your handwriting, I'm sorry, sir?</p> <p>22 A. My handwriting?</p> <p>23 Q. Yeah, on the --</p> <p>24 A. No.</p> <p>25 Q. No?</p>	<p style="text-align: right;">188</p> <p>1 Q. (BY MR. EDWARDS) Take a look at the first</p> <p>2 page there, sir, of these directors meeting notes.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recall, in July 16th, 2010, what</p> <p>5 would have been discussed about heat issues?</p> <p>6 A. Again, specifically what issues were</p> <p>7 discussed in July of 2010 --</p> <p>8 Q. You don't know?</p> <p>9 A. -- I wouldn't have any recollection as to</p> <p>10 specifics.</p> <p>11 Q. Take a look at -- it's page 469 on that</p> <p>12 document.</p> <p>13 A. Right.</p> <p>14 Q. And there is a discussion where it says,</p> <p>15 heat issues?</p> <p>16 A. Yes, sir.</p> <p>17 Q. It says, make sure you're covering in</p> <p>18 wardens meetings.</p> <p>19 Does that refresh your recollection at</p> <p>20 all?</p> <p>21 A. Again, I don't know if I -- I covered this</p> <p>22 agenda or Mr. Stephens covered this agenda, but</p> <p>23 that's -- that would surely be the intent of covering</p> <p>24 subject matter at regional directors and CID meetings</p> <p>25 to be -- to ensure that the information was</p>

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<p style="text-align: right;">189</p> <p>1 disseminated back to staff on the facilities. 2 Q. Sure. This doesn't help you -- help 3 transport you back to July 16th, 2010, but your 4 understanding, based on your experience and doing this 5 for a while, you fully expect that you discussed it, 6 you made it clear to your regional directors, get with 7 your wardens, make sure you're on top of this, that 8 heat is a danger, take steps to help the inmates. 9 Fair? 10 A. It surely appears from this document that 11 there was a similar discussion to that, yes, sir. 12 Q. Okay. Now, I want you to take a look at the 13 next section. It says, medical after hours coverage. 14 But before I get there, sir, and I apologize. 15 In that section, Heat Issues, where it 16 says, the wardens meetings, are those the meetings 17 that -- that the regional director has with his 18 particular wardens? 19 A. That's what that would be referencing, I 20 would assume. 21 Q. So Director Eason would have meetings with 22 the wardens in his region? 23 A. Yes, sir. 24 Q. Okay. All right. So this medical after 25 hours coverage says, e-mail sent to RD slash wardens.</p>	<p style="text-align: right;">191</p> <p>1 been held with the department heads. If I was in the 2 central office, I would have been in attendance. And 3 I'm not saying in this case that I wasn't in July of 4 2010, but if I would have been out of the office, 5 Mr. Stephens and the deputies would have held the 6 meeting, and I normally followed up the following day 7 with a meeting directly with the regional directors. 8 Q. Okay. What is DMS, if you know? 9 A. That's the -- as you referred earlier, the 10 telemedicine system that is used to provide access to 11 a medical personnel off-site. 12 Q. Okay. And it says, use 911 where needed. 13 You just don't know what that is in reference to? 14 A. I could not tell in what context that was 15 discussed. Again, not knowing who -- who made these 16 notes, I'm not sure what that was referenced. 17 Q. Okay. 18 (Deposition Exhibit No. 54 marked.) 19 Q. (BY MR. EDWARDS) Sir, was that 53? 20 A. Yes, sir. 21 Q. You can keep that for a little while. Let 22 me hand you this one. This looks like -- would you 23 identify that for the jury? 24 A. It appears to be an agenda for the 25 Correctional Institutions Division directors meeting.</p>
<p style="text-align: right;">190</p> <p>1 Do you know who RD would be? 2 A. It appears to say, regional directors and 3 wardens. 4 Q. And wardens. Okay. Thank you. And it 5 says, continue to use DMS on units with UTMB coverage. 6 Use 911 where needed. Turn machine on for offender 7 and step out of room. 8 What does that mean? 9 A. Again, I didn't make these notes nor do I 10 remember that conversation, so I -- I can't answer 11 that for you. 12 Q. Okay. Now, you -- well, you would have been 13 present during this meeting. Correct? 14 A. I may have been. 15 Q. You may have been? 16 A. Yeah. 17 Q. Okay. How -- 18 A. Again -- 19 Q. How would we find out if you actually were? 20 A. Again, I don't know that there is an 21 attendance to show whether I was actually at this 22 meeting or not. In most all cases, our CID meetings 23 were a -- conducted on two days. 24 Q. Uh-huh. 25 A. So in some cases that CID meeting might have</p>	<p style="text-align: right;">192</p> <p>1 It looks like it's dated 8-12-2010. 2 Q. And it looks like you're giving the opening 3 remarks there, so is it safe to say that you were 4 there? 5 A. If I was in attendance, I would have given 6 opening remarks. That's commonly placed on all the 7 agendas. 8 Q. Okay. 9 A. Again, in most cases I tried to attend. And 10 if I was there, I surely would have opened the meeting 11 and I would have conducted the meeting. In my 12 absence, my deputy director would have done that. 13 Q. All right. Would you turn to page 473 of 14 that document, sir. 15 A. Okay. 16 Q. It looks like under the section, after hours 17 on call system. 18 A. Right. 19 Q. That 296 UTMB personnel were laid off. Do 20 you recall that? 21 A. I recall that there was a reduction in force 22 with the University of Texas Medical Branch staff, and 23 I believe that did occur in 2010. 24 Q. Did that impact UTMB's ability to provide 25 medical care to the inmate population, laying off 296</p>

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<p style="text-align: right;">193</p> <p>1 medical providers?</p> <p>2 A. Again, it reduced the number of individuals</p> <p>3 that were available for use by UTMB.</p> <p>4 Q. Is it fair to assume that that means that</p> <p>5 less medical care would have been provided to the</p> <p>6 inmates?</p> <p>7 A. Again, not knowing which 296 individuals</p> <p>8 were laid off, I can't answer that question.</p> <p>9 Q. Okay. It looks like -- and then it goes on</p> <p>10 to say, modification to unit clinic hours.</p> <p>11 Is that -- did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. That's what it appears to say.</p> <p>15 Q. Yeah. And it says, one RN on unit eight</p> <p>16 hours.</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. What does that mean?</p> <p>20 A. Again, interpreting these notes, it</p> <p>21 references, I would assume, the RN on -- I don't know</p> <p>22 what unit it's referencing -- for eight hours. So</p> <p>23 other than what it says there, one RN on unit eight</p> <p>24 hours, I'm not sure which facility it's referencing or</p> <p>25 what facilities it's referencing.</p>	<p style="text-align: right;">195</p> <p>1 Q. Okay. Then it says, 79 units have 12-hour</p> <p>2 coverage. And I can't read the next word, which says,</p> <p>3 only eight hours? Could you help me?</p> <p>4 A. It appears to say, Keegan only eight hours,</p> <p>5 which is a facility in downtown Houston.</p> <p>6 Q. Gotcha. Then it says, after that, call 911.</p> <p>7 Do you have any idea what that means?</p> <p>8 A. Again, reading the document and trying to</p> <p>9 interpret it, I would assume that the indication is,</p> <p>10 after that eight-hour coverage period, should there be</p> <p>11 any issues on that facility, 911 is the recourse for</p> <p>12 medical attention.</p> <p>13 Q. Okay. With EAC reports or when inmates</p> <p>14 suffer serious injuries, is it generally the practice</p> <p>15 of TDCJ to video the scene and actually use a video</p> <p>16 camera?</p> <p>17 A. As an -- did you say in an accident, when an</p> <p>18 offender has a serious injury? Not in most cases. I</p> <p>19 don't know that that would be a situation where a</p> <p>20 video camera would be...</p> <p>21 Q. I've just seen documents where it says, you</p> <p>22 know, bring video camera, and there never ever is a</p> <p>23 video, it seems.</p> <p>24 A. Well, again, that's standard protocol. Any</p> <p>25 time there is any type of an emergency, rather than</p>
<p style="text-align: right;">194</p> <p>1 Q. Okay. So you don't know if that's just a</p> <p>2 policy that's throughout all -- all units?</p> <p>3 A. Again, I'm not sure, on these particular</p> <p>4 notes, what it's referencing.</p> <p>5 Q. Okay.</p> <p>6 A. As -- again, not making any assumptions, I'm</p> <p>7 not sure exactly what it's referencing.</p> <p>8 Q. Okay. It looks like to the right it says,</p> <p>9 Doctor Lincicum -- or Doctor Linthicum, excuse me --</p> <p>10 and there is, in parentheses, the word "handout." Do</p> <p>11 you see that? Look directly next to the after hours</p> <p>12 on call system, sir.</p> <p>13 A. Right.</p> <p>14 Q. Do you think that it would be better to ask</p> <p>15 questions of her as to this?</p> <p>16 A. Again, whether she can answer questions as</p> <p>17 it relates to these specific notes, I don't know. But</p> <p>18 it does reference her in reference to this subject</p> <p>19 matter.</p> <p>20 Q. Okay. Well, it says, one LVN and CMA after</p> <p>21 hours on call. Do you have any idea what that means?</p> <p>22 A. Again, I'm assuming it's referencing a</p> <p>23 facility or facilities. I would assume that that</p> <p>24 statement is referencing staff that is available on</p> <p>25 that facility or facilities.</p>	<p style="text-align: right;">196</p> <p>1 respond, a supervisor would be responding, what we</p> <p>2 would refer to initially as our A Responders,</p> <p>3 additional staff would be responding to the scene.</p> <p>4 One of those individuals in any emergency response</p> <p>5 would have the responsibility of retrieving a video</p> <p>6 camera. If they arrived on the scene and it was a use</p> <p>7 of force situation, something that required a -- a</p> <p>8 videotape by policy to be conducted, then that would</p> <p>9 be initiated upon arrival on the scene.</p> <p>10 In other cases, there would be</p> <p>11 situations where a video camera would not be used in</p> <p>12 those particular situations. So in some you might</p> <p>13 have. I'm not saying there has never been a</p> <p>14 situation --</p> <p>15 Q. No, no. That's fine.</p> <p>16 Would you have expected the McCollum</p> <p>17 incident where, you know, he was there for, you know,</p> <p>18 50 minutes, an hour, to be a situation where someone</p> <p>19 would have video'd that?</p> <p>20 A. No, sir.</p> <p>21 Q. Okay. Okay. Take a look at number seven on</p> <p>22 this exhibit. And just for the jury, that's</p> <p>23 Exhibit 54. Would you read the section under</p> <p>24 Discussion?</p> <p>25 A. It says, share with wardens to watch for</p>

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<p style="text-align: right;">197</p> <p>1 issues and make sure we are taking steps necessary to 2 control. Pass out water, do not confiscate fans, make 3 sure staff are provided for as well. 4 Q. Okay. Do you have a copy of the handout 5 that was provided at that meeting? Or at least it 6 appears that was provided? 7 A. Which handout? I'm sorry, which handout are 8 you referencing? 9 Q. Under number seven, where it says, heat 10 precautions, et cetera, and then there is, in 11 parentheses, handout. Do you have any idea what was 12 in that handout? If you don't, you don't. 13 A. No, I can't recall. I was trying to 14 determine, but I... 15 Q. All right. Do you recall ever talking about 16 temperate air flow? 17 A. Again, specifically, temperate air flow, no, 18 sir, I do not. And I don't know what would have been 19 referenced in there, nor can I discern from reading 20 the notes what might have been referenced. 21 Q. Well, it's in that main like, you know, 22 heading section, so -- 23 A. Right. 24 Q. That's not your word, though, temperate air 25 flow?</p>	<p style="text-align: right;">199</p> <p>1 heat-related issues like passing out or stroking? 2 A. Again, that's -- I would be making an 3 assumption as to what that is referencing, but I would 4 say that could be short based or broad based about any 5 issues that might even relate to instructions that 6 were given to the field. 7 Q. You would just be speculating on that point, 8 but -- 9 A. Right. 10 Q. -- based on your experience, you probably 11 could, but that's what -- you don't have any personal 12 knowledge of that? 13 A. Right. 14 Q. Okay. Now, passing out ice water, I just 15 want to be clear, that is absolutely one of the things 16 that TDCJ has decided, this is something -- this is a 17 benefit that we're going to provide to the inmate 18 population to help mitigate this heat is actually ice 19 water passed out in jugs. Right? 20 MR. GARCIA: Objection. Asked and 21 answered. 22 A. Again, that is one of the instructions that 23 we give to our wardens, to ensure ice water is 24 available on the dorms. 25 Q. (BY MR. EDWARDS) Okay. So if ice water,</p>
<p style="text-align: right;">198</p> <p>1 A. No. 2 Q. Okay. All right. Do not confiscate fans. 3 Do you recall there being an issue with correctional 4 officers confiscating inmate fans? 5 A. I don't recall a specific issue. That's a 6 reminder we put out routinely. I'm not, again, saying 7 that there might not have been an incident in some 8 facility in the state where that occurred or 9 detained -- or we became aware of it and addressed it 10 to all of the regional directors to ensure that that 11 was reemphasized. So, again -- but a specific 12 situation, I cannot recall a specific situation. 13 Q. The important thing -- well, is it fair for 14 us to glean from this that at least in August of 2010, 15 you're having meetings discussing the dangers of 16 extreme heat, and you're making sure your regional 17 directors are communicating to the wardens, you need 18 to take steps to protect the inmates? 19 A. Surely disseminating information to ensure 20 that we're working closely with the divisions on -- 21 for providing any mitigation or following through on 22 any mitigation efforts and working closely with health 23 services and fire and safety on particular facilities 24 to ensure that's done. 25 Q. It says to watch for issues. Is that</p>	<p style="text-align: right;">200</p> <p>1 you know, water with blocks of ice in it or ice cubes 2 in it, isn't being passed out, the correctional 3 officers responsible for that or the warden 4 responsible for that wouldn't be doing their job. 5 Correct? 6 MR. GARCIA: Objection. Asked and 7 answered. 8 A. Again, that's one of those precautions that 9 we take during summer months and, as was mentioned 10 earlier in my response, we instruct our wardens to 11 ensure that it's happening. 12 Q. (BY MR. EDWARDS) And if they don't do this 13 and they don't make sure that's happening, they're 14 effectively endangering the lives of the inmate 15 population. Right? 16 MR. GARCIA: Objection. Asked and 17 answered. Objection. Speculation. 18 MS. COOGAN: Join. 19 Q. (BY MR. EDWARDS) Right? 20 A. And, again, I believe I answered that 21 earlier. 22 Q. Okay. Well, humor me. Is the answer, yes? 23 A. The answer is, again, that's not the only 24 source of hydration, but it surely is an additional 25 effort that we make available to the offender</p>

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<p style="text-align: right;">201</p> <p>1 population to mitigate the circumstances in the 2 housing areas. 3 Q. Would you go to 482, sir. Who is Eileen 4 Kennedy? 5 A. She was a regional director in Region IV. 6 Q. Okay. Who is Diane Kukua? 7 A. Diane Kukua, again, at this time I believe 8 was a warden at the Ellis Unit. 9 Q. Okay. If you would, turn to 484. It says, 10 Mr. Thaler's agenda. Do you have any idea what that 11 is? 12 A. Yes. 13 Q. What is it? 14 A. This would be a copy of my -- of my agenda. 15 Q. Okay. So as I look at this, it appears you 16 wouldn't have been talking about heat, heat would have 17 been talked about by somebody else, at least at this 18 meeting? 19 A. In some cases. There are -- in some cases, 20 as you review my agenda and Mr. Stephen's agenda, 21 there will be duplicate subject matter. So you might 22 very well see something on Mr. Stephens' agenda that 23 also shows up on my agenda. In other cases, it would 24 be covered on one of the two. 25 Q. Okey-doke.</p>	<p style="text-align: right;">203</p> <p>1 Q. I mean, it appears to me, based on these 2 documents, you're personally involved in making sure 3 that precautions are taken at each of these 4 facilities, including the Hutchins facility. Is that 5 fair? 6 A. It surely would have been discussed at this 7 meeting with the regional directors. 8 Q. Okay. Would you flip to the next page, sir. 9 Do you recall discussing heat precautions at this 10 meeting? 11 A. Again, heat precautions was a topic that I 12 left on my agenda, and we discussed each time that we 13 met specific topics that were discussed in -- in June 14 of -- or May -- I'm sorry. May of 2011, I could not 15 detail or recall. 16 Q. Okay. You just know you talked about them? 17 A. Yes, sir. 18 Q. Okay. Take a look at the number three, 19 where it says, offender access to medical care. 20 A. Uh-huh. 21 Q. And then the person's name is Sharon Howell. 22 A. Yes, sir. 23 Q. As of May 12th, 2011, what position was -- 24 did Sharon Howell hold with the department? If you 25 know?</p>
<p style="text-align: right;">202</p> <p>1 (Deposition Exhibit No. 55 marked.) 2 MR. EDWARDS: Demetri, do you want one? 3 MR. ANASTASIDIS: Please. If you have 4 an extra copy, yes. Thank you. 5 Q. (BY MR. EDWARDS) I'm handing you 6 Exhibit 55. Is that a copy of your May 2011 7 Correctional Institutions Division directors meeting? 8 A. It is titled Correctional Institutions 9 Division directors meeting and dated 5-12-2011. 10 Q. Okay. It appear that you gave the opening 11 remarks at that meeting. Correct? 12 A. Again, if I was present, yes, I did. 13 Q. If you weren't present, who would have given 14 the opening remarks? 15 A. In most cases that would have been one of my 16 deputies, again. 17 Q. It does say, though, that the speaker was 18 yourself. Correct? 19 A. Yes, it does. 20 Q. Okay. All right. Why don't you flip over 21 to page 595. 22 A. Okay. 23 Q. And it looks like, in May of 2011, one of 24 your agenda topics is, again, heat precautions. 25 A. Yes, sir.</p>	<p style="text-align: right;">204</p> <p>1 A. I'm not sure of her title. She worked in 2 the general counsel's office. 3 Q. Okay. Would you read the discussion 4 section, please? Beginning with lawsuit, dash? 5 A. The notes say, lawsuit, dash, security left 6 offender unresponsive. It looks like, six H -- 7 representing six hours, I'm assuming -- security -- it 8 says, security make medical do it. TDCJ slash UTMB 9 both dropped ball in this situation. Ultimately 10 warden's responsibility. 11 Q. Do you recall that discussion? 12 A. I do not recall that discussion or what 13 incident in this case is being referenced. I'm trying 14 to recall, but I don't -- I do not -- I do not recall 15 which incident is being referenced. 16 Q. Regardless, a security officer, based on 17 this document, left an offender unresponsive for a 18 significant period of time. Correct? 19 A. That's -- again, that's what the note says. 20 Q. Okay. And it looks like an acknowledgment 21 that the department, TDCJ, and UTMB, at least in 22 Ms. Howell's opinion, both dropped the ball. Is that 23 accurate? 24 A. That's also the notes that are stated here. 25 Q. And then ultimately it's the warden's</p>

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<p style="text-align: right;">205</p> <p>1 responsibility when TDCJ and UTMB drop the ball at a 2 particular facility? 3 A. That's what the note says here. 4 Q. Do you agree with that sentiment? 5 A. I agree that the warden surely burdens -- 6 holds the burden of responsibility on many issues that 7 occur on his facility. He does not have, or she does 8 not have total autonomy on all operations on the 9 facility, so there surely would be some shared 10 responsibility in some areas. 11 Q. Okay. If you would, flip to page 603, sir. 12 As I read that, it looks like there is a breakout 13 session with RT. I'm assuming that that is you? 14 A. That appears to be so, yes, sir. 15 Q. Okay. Where you're talking about heat 16 precautions? 17 A. Yes, sir. 18 Q. And that an officer, correctional officer 19 actually died in Beeville. Is that a fair 20 characterization? 21 A. Two different subject matters. 22 Q. Okay. 23 A. Heat precautions were surely talked about. 24 It was on my agenda and I would have covered that. 25 Q. Okay.</p>	<p style="text-align: right;">207</p> <p>1 Q. Okay. I guess -- it says, take appropriate 2 precautions, employer -- employee ease, plus 3 offenders. 4 What does that reference? 5 A. Again, not being my notes -- 6 Q. If you don't know, that's okay. I just -- 7 you know, because you seemed to know how the -- the 8 officer died during the PAT test. 9 A. So that was an incident that happened very 10 infrequently, unfortunately. So, again, I'm not 11 sure -- I'm not sure what that is referencing. 12 Q. Okay. Now, I understand that employee 13 deaths during PAT tests occur infrequently, but 14 heat-related illnesses don't occur infrequently in the 15 department. Is that -- 16 MS. COOGAN: Objection. Argumentative. 17 MR. GARCIA: Speculation and vague. 18 Q. (BY MR. EDWARDS) Sir, I mean, do you get a 19 lot of heat-related illness -- illnesses at TDCJ? You 20 know, people suffering heat exhaustion, fainting, 21 throwing up, vomiting, you know, amongst your 22 correctional staff? 23 MR. GARCIA: Objection. Compound. 24 MR. ANASTASIDIS: Objection. Vague. 25 MS. COOGAN: And vague as to the term</p>
<p style="text-align: right;">206</p> <p>1 A. The second agenda item there talks about the 2 physical agility test that is required for all staff 3 within our department, and references a -- a situation 4 where an officer passed away while taking this test at 5 one of our training facilities. So it's two different 6 subjects. 7 Q. Okay. Did heat play a role in that 8 officer's death, to your knowledge? 9 A. Not to my knowledge, no, sir. 10 Q. When you say, not to -- could have, it might 11 have, it might not have. Is that fair? 12 A. I don't believe it had anything to do with 13 it. I believe that it was a, to the best of my 14 recollection, cardiac arrest. And I don't even -- I'm 15 not even sure whether they were outdoors when they 16 were taking the physical agility test. But it had 17 more to do with the condition of the staff member and 18 the stress on the test. 19 Q. Let's talk about that. Does the Texas 20 Department of Criminal Justice consider deaths by 21 cardiac arrest that occur in indoor temperatures above 22 90 degrees to be heat related or not? 23 A. I can't respond to that question. 24 Q. You don't know? 25 A. I don't know.</p>	<p style="text-align: right;">208</p> <p>1 "a lot." 2 Q. (BY MR. EDWARDS) Is it -- you tell me. I 3 mean -- 4 A. There are occurrences throughout the 5 seasonal period, but I surely wouldn't qualify that as 6 a lot. In most cases, those are individuals that are 7 performing work functions, staff, or in some cases our 8 offenders that work in various areas at our 9 facilities. 10 Q. Okay. During the summer months do you find 11 that employees are absent from work more often than 12 the other months of the year? 13 A. Not -- not necessarily. Our -- our 14 shortages for staff are -- are fairly consistent. 15 There are probably a slight rise in employee absences 16 during the summer months. 17 Q. Do you think that might be due to the fact 18 that the indoor housing areas are not air conditioned 19 and that your workers have to work in that -- 20 MS. COOGAN: Objection. Speculation. 21 A. Again, that would be speculation. But in my 22 years of experience, I would say it has more to do 23 with kids being out of school. 24 Q. (BY MR. EDWARDS) Okay. Okay. So if 25 correctional officers testify at trial that their</p>

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<p style="text-align: right;">209</p> <p>1 experience is that more people are absent from work 2 and miss shifts during the summer due to the heat, 3 would you disagree with that? 4 A. Again, I have no evidence to indicate that. 5 I'm not saying that there hasn't been somebody that 6 testified to that. But as a warden on a facility for 7 12 years, as a regional director, there were a 8 multitude of reasons why individuals did not report 9 for duty. I would have not -- not -- would have not 10 listed the conditions of the working environment due 11 to heat during the summer as one of those causal 12 factors for employee absences, in my professional 13 opinion. 14 Q. Okay. All right. 15 (Deposition Exhibit No. 56 marked.) 16 Q. (BY MR. EDWARDS) Take a look at July 14th, 17 2011. It's Exhibit 56, sir. Again, this is another 18 one of these monthly meetings. Right? 19 A. It appears to be so, yes, sir. 20 MR. ANASTASIDIS: Do you have an extra 21 copy for me, Jeff? 22 MR. EDWARDS: I do. I do. 23 Q. (BY MR. EDWARDS) Oh, you know what? I gave 24 you the wrong copy, Mr. Thaler. Do you mind if I take 25 that back and switch that out? Sorry about that.</p>	<p style="text-align: right;">211</p> <p>1 passed out. 2 Q. Okay. Well, it appears to say that the 3 incidents have increased with hot weather, and that 4 there have been ten offender and 20 employee 5 heat-related issues as of July 14th, 2011. Did I read 6 that correctly? 7 A. Yes, you did. 8 Q. Okay. I mean, to me, that would indicate 9 that all of the regional directors, Director Stephens 10 and yourself, are being made aware by the EAC people 11 that, look, the incidents with heat are rising, and 12 that there have been ten offender and 20 employee 13 heat-related issues to date, this year. Fair? 14 A. It indicates that many has occurred, yes. 15 Q. Okay. That's a -- that's 30 incidents. 16 Correct? 17 A. That's 30 incidents, ten offenders out of 18 156,000. 19 Q. Okay. Is that how you look at it? Ten 20 offenders out of 156,000? 21 MR. GARCIA: Objection. Argumentative. 22 MR. ANASTASIDIS: Objection. 23 Argumentative. 24 A. Again, we have to look at -- measure the 25 number of incidents that we're having across the</p>
<p style="text-align: right;">210</p> <p>1 A. The highlighted portions were helping me. 2 Q. Well, unfortunately, they help me more than 3 they might help you. 4 At the risk of an asked and answered 5 objection, this is the July 14th, 2011 directors 6 meeting notes and agenda? 7 A. It's dated and it appears to be such, yes, 8 sir. 9 Q. Okay. All right. Why don't you flip to 10 page 618. 11 A. Okay. 12 Q. Under the heading, EAC Update, again, there 13 is a handout. Do you have a copy of that handout? 14 A. Again, not to my knowledge. I'm not sure 15 what handout is referenced here. 16 Q. Okay. 17 A. The -- in most cases, this individual whom 18 was working in executive services at the time covered 19 a monthly EAC report and provided a handout to all 20 regional directors, that EAC report, if it's the one 21 referenced here, dealt with appropriate time reporting 22 graphs for the regional director to ensure that they 23 were processing their EAC reports in a timely manner. 24 So not knowing for sure what that handout is, I would 25 maybe make an assumption that that is exactly what was</p>	<p style="text-align: right;">212</p> <p>1 board. If it's a larger number, it surely would be of 2 greater concern. 20 employees out of 35,000, surely 3 something we would also have to look at. If that 4 number spikes from year to year at any particular 5 time, it's surely an indicator that we need to ensure 6 that we're taking appropriate measures to increase our 7 focus on the issue and make sure that we're doing 8 everything that we say we're doing. 9 Q. (BY MR. EDWARDS) Okay. And that's what -- 10 I mean, to me, that suggests, look, that's a number 11 that is significant enough for a person in your 12 position at the time to say, hey, we need to make sure 13 we're doing what we're saying we're doing. Right? 14 A. Well, again -- 15 MR. GARCIA: Objection. Is that a 16 question? 17 MR. EDWARDS: You bet it is. 18 A. Well, again, as covered when we started this 19 agenda, the topic of heat-related precautions was 20 covered repeatedly. 21 Q. (BY MR. EDWARDS) Uh-huh. 22 A. Those ten offenders would cover the array of 23 everything that's -- we're required to do on a monthly 24 basis inside our institutions. This takes us into the 25 middle of the summer. As I said, most heat-related</p>

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<p style="text-align: right;">213</p> <p>1 instances that I recall, particularly as it dealt with 2 the offenders and employees were work-related issues. 3 So there surely were additional discussions about 4 ensuring that we were not taking offenders out in work 5 squads or in areas and exposing them to strenuous 6 activity during the hotter parts of the day. But we 7 worked thousands of offenders every day within our 8 institutions, and although, again, one illness or one 9 injury is important to us, ten in the perspective of 10 156,000 over a month and a half of the summer is -- is 11 surely a -- a number that wouldn't cause grave 12 concern. 13 Q. Would it cause you any concern? 14 A. Again, one incident would -- 15 Q. This is 30, not one. 16 MS. COOGAN: Please let the witness 17 finish his answer. 18 A. As I mentioned before, incidents, no matter 19 what the precautions you take, are going to -- are 20 going to occur. So I would have to look at each 21 specific incident here to see whether or not that is 22 alarming or not. But just simply referencing the 23 number, to the scale of number of staff involved in 24 this process, the 35,000 that work out on our 25 facilities, those are -- that's a fairly minimal</p>	<p style="text-align: right;">215</p> <p>1 MR. ANASTASIDIS: Objection. Recall 2 what part of the summer of 2011? 3 Q. (BY MR. EDWARDS) All parts of it? 4 A. I don't -- I don't -- 5 Q. Do you recall July of 2011? Do you have any 6 memory of it? Do you have any memory of how hot it 7 was here in Texas? 8 MR. GARCIA: Objection, argumentative. 9 Objection, compound. Relate it to one question, 10 Counsel. 11 Q. (BY MR. EDWARDS) Do you recall how hot it 12 was in Texas in 2011, during July? 13 A. I remember that in 2007 there were hot days 14 in -- during the summer months in July and August, 15 yes. 16 Q. Now, I may have misheard you, but I believe 17 you might have said 2007. You probably meant 2011 -- 18 A. I'm sorry. 2011. 19 Q. I just want the record to be clear, so let 20 me ask it one more time. 21 Do you recall how hot it was in the 22 summer of 2011, particularly in July of 2011? 23 MR. ANASTASIDIS: Objection. Vague. 24 Q. (BY MR. EDWARDS) Okay. 25 MR. ANASTASIDIS: If you're able to</p>
<p style="text-align: right;">214</p> <p>1 number for the job we're required to do day in, day 2 out, inside and outside our institutions. 3 Q. (BY MR. EDWARDS) Ten people died the summer 4 of 2011 from hyperthermia. Is that a minimal number 5 in the context of the amount of prisoners that TDCJ 6 houses? 7 A. Again, as was referenced earlier, one death 8 is too many. So we surely make all efforts to look at 9 every situation that we have to determine whether or 10 not policies and procedures were followed in each 11 particular incident, and make sure that we're meeting 12 our obligations to staff and the offender population 13 in -- as it relates to that particular subject matter. 14 Q. Well, my question is just, you've got -- 15 you're on notice of -- at least as of July 14th, 2011, 16 and at this point, at least, in most of Texas, it's 17 starting to get really hot. Is that correct? 18 MR. ANASTASIDIS: Objection to the 19 phrase "really hot." 20 MR. GARCIA: Objection to the compound 21 nature of the question. 22 A. Again, I don't recall what the temperatures 23 were -- 24 Q. (BY MR. EDWARDS) Do you recall the summer 25 of 2011, sir?</p>	<p style="text-align: right;">216</p> <p>1 answer it, go ahead. And if you're not, don't -- 2 A. Again, I don't specifically remember how hot 3 it was in July. I do remember that, as most Texas 4 summers are, July was hot in 2011. 5 Q. (BY MR. EDWARDS) Let me ask it a little 6 different way. 7 Do you recall that it was even hotter 8 than previous Texas summers? 9 MR. GARCIA: Objection. Vague. 10 A. Again, I don't know how -- how to compare. 11 I have gone through several hot summers in my career 12 with TDCJ, so comparatively, depending on what year 13 you're talking about, there were a number of hot days 14 in 2011. 15 Q. (BY MR. EDWARDS) Okay. All right. Well, 16 given -- you know, we'll go to the actual temperatures 17 for the heat. But given the number of incidents and 18 the heat, do you recall doing anything in particular 19 in terms of instructing the regional directors or the 20 wardens, hey, this is really hot. We've already had 21 30 incidents as of July 14th, 2011. If you don't 22 recall, that's fine. 23 A. Again, I do not recall. 24 Q. Okay. Would you flip to page 620. 25 I'm sorry. Page 619. I apologize,</p>

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<p style="text-align: right;">217</p> <p>1 sir. Under section five, Ag Issues, it looks like a 2 drought is being experienced. Do you have any 3 knowledge of that? 4 A. Again, I'm -- I would not know -- this would 5 have been covered by Matt Demny, the agricultural 6 supervisor. I assume by these notes that he was 7 referring to a drought being experienced in portions 8 or a portion of the state resulting -- affecting the 9 agricultural operation. 10 Q. And he is the one who we should talk to 11 about the pigs. Right? 12 A. Again, the swine program is underneath his 13 purview as Agricultural Division director. 14 Q. Okay. Do you recall any specific mention of 15 not enough hay due to the drought? 16 A. Again, I'm not sure whether it was 2011 if 17 he mentioned it. I'm sure there were, but on years 18 where there is a lack of rainfall, he does cover that 19 subject matter because he is required to keep up the 20 livestock. 21 Q. Okay. With regards to those 30 heat-related 22 issue incidents that were discussed on July 14th, 23 2011, do you recall the specifics of any one of them? 24 A. No. And in most cases, being reported out 25 by the individual that's stated here, again, assuming</p>	<p style="text-align: right;">219</p> <p>1 MR. ANASTASIDIS: Thank you. 2 MR. EDWARDS: And you can give this to 3 your director. 4 MR. ANASTASIDIS: Thank you. 5 Q. (BY MR. EDWARDS) In fact, Douglas Hudson 6 had died of hyperthermia. Isn't that correct? 7 A. I don't have the list in front of me, but if 8 you say so. 9 Q. A 62-year old man, no memory of that? 10 A. Generally, I don't remember the specific 11 date. 12 Q. Okay. That's fine. You gave the opening 13 remarks, or at least it appears that you gave the 14 opening remarks -- 15 A. If I was present I would have, yes, sir. 16 Q. Okay. And under the section Opening 17 Remarks, would you -- would you read the discussion 18 points? 19 A. It says -- it appears to say, heat, take 20 precautions, slash, monitor. 21 Q. Okay. What does that mean? 22 A. Again, I'm not -- I'm not sure. 23 Q. Okay. Well, you gave the remarks and I 24 guess this is my one chance to ask you about it. What 25 do you recall specifically telling your -- you know,</p>
<p style="text-align: right;">218</p> <p>1 that this individual was there and not an employee of 2 this individual, she would have referenced those 3 numbers similar to -- total numbers similar to she 4 would on any other type of incident. And in most 5 cases, there wasn't discussion about specific 6 incidents, just general numbers. 7 MR. EDWARDS: Let me object as 8 nonresponsive. 9 Q. (BY MR. EDWARDS) Sir, my question is 10 just -- it's a more basic one. 11 Do you recall any specific talk of 12 specific incidents, any one of the 30 mentioned there, 13 where specific detail was given? 14 A. No. 15 Q. Do you recall -- okay. Thank you. 16 (Deposition Exhibit No. 57 marked.) 17 Q. (BY MR. EDWARDS) Let's move on to 18 August 2011. By this time, people have started dying 19 of heat stroke in the prison system. Right? 20 A. There were several incidents that had 21 occurred, yes, sir. 22 MR. ANASTASIDIS: Jeff, may I trouble 23 you for a copy? 24 MR. EDWARDS: Oh, yeah. I'm sorry, 25 Demetri. Of course.</p>	<p style="text-align: right;">220</p> <p>1 your regional directors and your staff? 2 A. Again, from this document I cannot assure 3 you that I gave the opening remarks, so... 4 Q. If you didn't give the opening remarks, who 5 would it have been? Would it have been Director 6 Stephens? 7 MR. GARCIA: Objection. Asked and 8 answered. 9 MR. EDWARDS: Not for this meeting. 10 A. It would have been one of my deputy 11 directors. It could have been Mr. Stephens or one of 12 the other two deputies would have held the meeting. 13 Q. (BY MR. EDWARDS) Okay. What is, central, 14 all offenders have been removed, mean? 15 A. This was the year that the legislature 16 closed the central facility and the offenders were all 17 moved out of that facility. 18 Q. Would you flip to page 634, sir. Do you see 19 the section labeled Heat? 20 A. Yes, sir. 21 Q. Am I reading this right? Do not turn water 22 off in cells, make sure passing out ice water? 23 A. Yes, sir. 24 Q. Was there an issue with -- were people 25 turning off the water in cells?</p>

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<p style="text-align: right;">221</p> <p>1 A. I do not personally remember an issue with 2 that. 3 Q. It says, Stephens. Is that -- should we ask 4 Mr. Stephens -- 5 A. It appears Mr. Stephens covered that topic. 6 Q. Okay. Can you think of a reason why staff 7 would turn off water in the cells? 8 A. No, sir. 9 Q. Okay. All right. If you flip to the next 10 page, it looks like there is a heat awareness 11 discussion and that Mr. Stephens is giving that. Is 12 that a fair characterization of page 635? 13 A. It's listed as an item, yes, sir. 14 Q. Okay. Let me ask you about the water in the 15 cells. In a facility like Hutchins, there aren't 16 really cells, there are just dorm units. 17 A. Correct. 18 Q. Would that refer to like water like in the 19 sinks and stuff like that? 20 A. No. Again, I would have to be speculating 21 on what this was actually referencing. 22 Q. Okay. 23 A. But because it references cells, I think 24 that would be talking about a cellblock, not a 25 dormitory housing area.</p>	<p style="text-align: right;">223</p> <p>1 extended career in the agency, I don't know that I 2 ever received a complaint from an offender as a warden 3 through the grievance process that they did not have 4 some mechanism to be able to retrieve water and drink 5 water, whatever that happened to be. But in most 6 cases, also, should that offender not have anything, 7 if he were to ask a staff member, I would assume that 8 staff member would assist him with a cone cup or some 9 device, or some item so that the individual could have 10 something to drink out of. 11 MR. EDWARDS: Okay. Let me object as 12 nonresponsive. 13 Q. (BY MR. EDWARDS) But I appreciate that, 14 sir. 15 A. Okay. 16 Q. Okay. Would you flip to page 638. And I'm 17 afraid I know the answer but -- 18 A. Okay. 19 Q. -- where it says, heat awareness done, do 20 you recall anything about that -- that talk or that 21 agenda item? 22 A. No, sir. 23 Q. Okay. Would you turn to page 639, sir. 24 A. Okay. 25 Q. There appears to be a UTMB handout for</p>
<p style="text-align: right;">222</p> <p>1 Q. Okay. Do you know if prisoners, upon 2 entering the Hutchins facility or, frankly, any 3 transfer facility at TDCJ were issued a cup upon 4 arrival? 5 A. I don't know that it was standard policy to 6 issue a cup, no, sir. 7 Q. Do you think that having a cup makes it 8 easier to drink water in a prison facility? 9 A. Having -- having a drinking device would 10 make it easier to drink water, yes, sir. 11 Q. Is a cup a drinking device? 12 A. Yes. 13 Q. Okay. Has -- my understanding, through the 14 testimony here, is that at Hutchins, no cups were 15 passed out to offenders immediately upon entry, at 16 least when Mr. McCollum entered the facility. Is that 17 consistent with your memory? 18 A. That's consistent with my memory, yes, sir. 19 Q. Has that been changed? 20 A. I believe it has at Hutchins. And I believe 21 that -- again, I'm no longer with the system, but 22 instruction has been to ensure that individuals that 23 are accessing, particularly the ice water that is 24 passed out, have the availability of a cup to drink 25 out of. I -- I do have to also say that in my</p>	<p style="text-align: right;">224</p> <p>1 eight-hour facilities. 2 A. Yes, sir. 3 Q. It doesn't appear that Hutchins is on this 4 list. Do you know why? 5 A. No, I don't know why. 6 Q. Okay. Tell me what KOP means. 7 A. Carry on person. 8 Q. Carry on person. At this time, were other 9 non-24-hour facilities already KOP? 10 MS. COOGAN: Objection. Vague. 11 A. I'm sorry. Can you repeat that? 12 Q. (BY MR. EDWARDS) Yeah. Were other 13 non-24-hour facilities, excluding the Hutchins Unit, 14 KOP facilities, if you know? 15 MS. COOGAN: Objection. Vague. 16 A. Again, my general knowledge is, carry on 17 person medication was used throughout the system for 18 dispensing some medications. 19 Q. (BY MR. EDWARDS) Okay. If you would turn 20 to 642, sir. It looks like, again, you're talking 21 about heat precautions here, or at least the people at 22 this meeting are? 23 A. Right. 24 Q. And it says, make sure every warden is 25 directly involved and we are taking care of offenders</p>

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<p style="text-align: right;">225</p> <p>1 and staff.</p> <p>2 Do you know what precipitated that?</p> <p>3 A. I'm sure, as we moved into the month of</p> <p>4 August and dealt with situations, again, as I</p> <p>5 mentioned through the -- throughout the deposition,</p> <p>6 our discussions with unit staff, our discussions with</p> <p>7 division heads increased. There was the initial</p> <p>8 discussions with the Health Services Division about</p> <p>9 providing an even more directed focus on individuals</p> <p>10 that fell in certain sub groups, and I'm sure</p> <p>11 that's -- that's what it's referencing, in addition</p> <p>12 to, again, ensuring that the -- wardens were --</p> <p>13 regional directors were ensuring that the wardens were</p> <p>14 directly involved in working with those entities to</p> <p>15 get that accomplished.</p> <p>16 Q. These precautions you're talking about in</p> <p>17 August, are these the same types of precautions and</p> <p>18 instructions and warnings you would have provided in</p> <p>19 May and June and July?</p> <p>20 A. Again, when we reference this note, as I'm</p> <p>21 referencing this note, in -- in item number six on</p> <p>22 this -- this handout that we're reviewing, it would</p> <p>23 have surely covered those items that we require every</p> <p>24 facility and have required every facility to</p> <p>25 participate in.</p>	<p style="text-align: right;">227</p> <p>1 facility, when they were to identify an individual</p> <p>2 with the symptoms of a heat-related illness, were</p> <p>3 contacting health service providers for -- for care.</p> <p>4 Q. Prior to this time, should they have been</p> <p>5 doing this prior to this time or was that new?</p> <p>6 A. Sure. They have always been required to do</p> <p>7 that. This again was just talking about stressing the</p> <p>8 importance of it to staff and, again, ensuring that we</p> <p>9 were following through with ensuring that was</p> <p>10 happening.</p> <p>11 Q. Okay. Under number six it says, rotate</p> <p>12 staff assignments where heat is an issue.</p> <p>13 Do you see that? Down at the bottom?</p> <p>14 A. I'm sorry. Oh, I'm sorry. Down -- okay. I</p> <p>15 was looking at number six up top. I'm sorry.</p> <p>16 Q. That's okay.</p> <p>17 A. Yes, sir.</p> <p>18 What was the question? I'm sorry.</p> <p>19 Q. Yeah. Just what is meant by that, rotate</p> <p>20 staff assignments where heat is an issue, if you know?</p> <p>21 A. Again, I would conclude that that is a --</p> <p>22 determining that particularly staff that's assigned to</p> <p>23 outside areas are rotated and not put on 12-hour</p> <p>24 shifts, but could -- could apply to, in some cases,</p> <p>25 those areas where you have staff that are working</p>
<p style="text-align: right;">226</p> <p>1 It appears also to notate the</p> <p>2 additional steps, the beginning of the formation of</p> <p>3 that wellness checklist and identifying individuals</p> <p>4 that -- that we need to focus our attention on, or</p> <p>5 give a higher degree of attention to and cooperation</p> <p>6 with the Health Services Department.</p> <p>7 THE VIDEOGRAPHER: Mr. Edwards.</p> <p>8 MR. EDWARDS: Sure.</p> <p>9 THE VIDEOGRAPHER: We're off the record</p> <p>10 at 3:37 p.m.</p> <p>11 (RECESS.)</p> <p>12 THE VIDEOGRAPHER: We're back on the</p> <p>13 record at 3:38 p.m.</p> <p>14 Q. (BY MR. EDWARDS) Sir, do you have any idea</p> <p>15 what is meant by "management training"? Does it have</p> <p>16 anything to do with the heat precautions?</p> <p>17 A. This appears to reference a training topic.</p> <p>18 It appears to reference the training of midline</p> <p>19 supervisors. It appears to reference a discussion</p> <p>20 about wardens training for the next two years.</p> <p>21 Q. Okay. With regard to the heat precautions</p> <p>22 up in number six, where it says, make referrals to</p> <p>23 health services as needed, what is that referencing?</p> <p>24 A. Again, from reading these notes, I would</p> <p>25 conclude that that was ensuring that staff on the</p>	<p style="text-align: right;">228</p> <p>1 throughout the facility. That, again, wouldn't be</p> <p>2 applicable on many of our facilities because most of</p> <p>3 our facilities, particularly those that were built</p> <p>4 prior to the late '90s, working assignments in either</p> <p>5 condition are the same -- in either position are the</p> <p>6 same. Sorry.</p> <p>7 Q. Do you know if Warden Pringle was instructed</p> <p>8 to rotate staff assignments for individuals working</p> <p>9 inside the Hutchins Unit?</p> <p>10 A. I don't know specifically if he was</p> <p>11 instructed.</p> <p>12 Q. Okay. Here it says, ask question when have</p> <p>13 an incident, fan, water, health services contacted, et</p> <p>14 cetera. Do you know why that was there, or is that</p> <p>15 just more of the same, the exact same thing, it's just</p> <p>16 different words here?</p> <p>17 A. Again, I'm not sure what that is</p> <p>18 referencing. That's carrying on through number six,</p> <p>19 so I'm sure there was a litany of issues that -- that</p> <p>20 had to be covered.</p> <p>21 Q. Well, those questions should have been asked</p> <p>22 for every death that occurred. Right?</p> <p>23 A. These questions should have been asked?</p> <p>24 Q. Yes.</p> <p>25 A. Again --</p>

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<p style="text-align: right;">229</p> <p>1 Q. There is nothing new about August 11th, 2 2011, that says, oh, now we need to ask these 3 questions. These are just questions that you should 4 have been asking, or your people should have been 5 asking with regard to all heat-related illnesses. 6 Right? 7 A. These are -- as referenced in these notes 8 here, these are reiterating our need to stay focused 9 on the issue, and one case referencing the beginnings 10 of that wellness checklist. 11 Q. Are you familiar at all with the 12 circumstances behind the death of Kenneth Wayne James? 13 A. Again, generally. I was served with a -- 14 I'm trying to -- 15 Q. We'll keep -- we'll ask those questions 16 later. That's fine. 17 If you would flip to 2012, and we'll 18 make this the next exhibit, 58. 19 (Deposition Exhibit No. 58 marked.) 20 Q. (BY MR. EDWARDS) There you go. Are these 21 the minutes from the March 15th, 2012 meeting? 22 MR. ANASTASIDIS: Do you happen to have 23 an extra copy of that too, Jeff? 24 MR. EDWARDS: I do. 25 MR. ANASTASIDIS: Thank you.</p>	<p style="text-align: right;">231</p> <p>1 Q. The entire thing? Okay. All right. And 2 then if you will look at page 754, that's just more of 3 the same. Heat-related illnesses, make sure that you 4 talk about it every month, make sure that the wardens 5 are on notice of this. That type of instruction? 6 A. General discussion, yes, sir. 7 Q. Okay. Do you recall talking about the -- 8 the high number of deaths the previous summer due to 9 hyperthermia? 10 A. In general. I surely remember speaking 11 about that at a regional directors meeting. Whether 12 it was this one or one prior to this, I'm not real 13 sure. 14 Q. Okay. Well, let me flip -- flip to page 15 760. And why don't you take a look at heat-related 16 illness training, and if you could read the first 17 sentence in the discussion portion of that, please, 18 sir? 19 A. It says, ten deaths last year relating to 20 heat. 21 Q. Okay. So certainly you were aware by this 22 time that ten people had died related to the heat in 23 the summer of 2011. Right? 24 MR. ANASTASIDIS: Objection. Asked and 25 answered.</p>
<p style="text-align: right;">230</p> <p>1 MR. EDWARDS: You're welcome. 2 A. Yes, sir. It appears to be dated 3 March 15th, 2012. 4 Q. (BY MR. EDWARDS) Okay. Would you take a 5 look at page 757, sir. Does that mean that -- at the 6 top corner, it looks like it says, B. Livingston. Is 7 that correct? 8 A. It does. 9 Q. Does that mean that Brad Livingston attended 10 this meeting? 11 A. He could have, yes, sir. 12 Q. I understand that he could have. Does that 13 likely mean that he probably did? 14 A. I would say that he made an appearance at 15 the meeting, yes, sir. 16 Q. Okay. Now in your experience would he have 17 just made an appearance and then left after giving his 18 presentation or would he be privy to all of this 19 information? 20 A. In most cases, Mr. Livingston would show up 21 and address the -- address the staff attending the 22 meeting and then step out. 23 Q. Okay. 24 A. I don't recall any -- any meeting where 25 Mr. Livingston attended the whole meeting.</p>	<p style="text-align: right;">232</p> <p>1 A. Yes, sir. 2 Q. (BY MR. EDWARDS) Anybody at that meeting 3 should have been aware that ten people had died 4 related to the heat in TDC custody. Right? 5 MR. ANASTASIDIS: Objection. Calls for 6 speculation. 7 THE REPORTER: I'm sorry. 8 MR. ANASTASIDIS: If you can answer 9 that question without speculating, do so, please. 10 A. Again, the subject matter appears to be 11 covered. 12 Q. (BY MR. EDWARDS) Okay. Then it says, big 13 star, talk to WS. Do you know what that is? 14 A. That is going to reference a talk to William 15 Stephens. 16 Q. Is that your handwriting? 17 A. No, sir. 18 Q. And do you have any idea who that is, whose 19 handwriting this is? 20 A. No, sir. 21 Q. Okay. And then just more discussion about 22 training and wellness checks like we've talked about 23 before? 24 A. There is discussion about that, yes, sir. 25 Q. Okay. Do you know if Director Eason was at</p>

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<p style="text-align: right;">233</p> <p>1 this meeting?</p> <p>2 A. Again, from this document, I -- I can -- I</p> <p>3 cannot tell.</p> <p>4 Q. Now, on page 765, there is the heading, Heat</p> <p>5 Preparations. Do you have any idea what that is all</p> <p>6 about? If you don't, just let me know.</p> <p>7 A. No, I do not. I'm assuming maybe that that</p> <p>8 might have been a deputy director's agenda item, and</p> <p>9 since it was covered earlier, that it might not have</p> <p>10 been covered there. That would be my assumption.</p> <p>11 Q. You just don't know, though?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Now, take a look at page 766. It</p> <p>14 looks like there are several offender deaths</p> <p>15 discussed. Is that accurate?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Now, these don't appear to be heat-related</p> <p>18 deaths. Correct?</p> <p>19 A. Correct.</p> <p>20 Q. My question is, did you ever have any</p> <p>21 discussions at your directors meetings about all of</p> <p>22 the people that died of heat-related deaths, like you</p> <p>23 appear to be having about these particular people on</p> <p>24 document 766?</p> <p>25 A. Well, again, I guess I can answer it this</p>	<p style="text-align: right;">235</p> <p>1 cases up until 2011, issues were -- those issues were</p> <p>2 so infrequent that it was just never -- it was never</p> <p>3 addressed.</p> <p>4 Q. Is it now considered a serious incident</p> <p>5 which requires review since it's no longer infrequent.</p> <p>6 MS. COOGAN: Objection --</p> <p>7 A. Again --</p> <p>8 Q. (BY MR. EDWARDS) Let me ask you, do you</p> <p>9 consider it infrequent, hyperthermia and heat stroke</p> <p>10 in the Texas prison system, as you sit here today,</p> <p>11 currently?</p> <p>12 A. Again, through the month of -- the months of</p> <p>13 July and August of 2010, there were surely numerous</p> <p>14 incidents. I still believe that -- that those</p> <p>15 situations are infrequent, although they do occur.</p> <p>16 Q. Okay. Well --</p> <p>17 (Deposition Exhibit No. 59 marked.)</p> <p>18 Q. (BY MR. EDWARDS) -- as you testify here</p> <p>19 today, do you believe that heat-related deaths should</p> <p>20 warrant a serious incident review?</p> <p>21 A. Again, that's something that -- again, I'm</p> <p>22 not in a position to make that decision any longer,</p> <p>23 but --</p> <p>24 Q. Well, you were.</p> <p>25 A. -- surely would -- would in some cases, I</p>
<p style="text-align: right;">234</p> <p>1 way: Surely some of the subject matter relating to</p> <p>2 those heat-related deaths was talked about. What you</p> <p>3 see on this page here is a list of deaths that</p> <p>4 occurred that at the time required a serious incident</p> <p>5 review be conducted. And what this outlines is those</p> <p>6 four serious incident review incidents that were</p> <p>7 discussed at the regional directors meeting, and to</p> <p>8 finalize the reports and to speak with those</p> <p>9 particular regional directors that either conducted</p> <p>10 these serious incident reviewed or were responsible</p> <p>11 for the facilities where these incidents occurred.</p> <p>12 And this was our mechanism at the conclusion of the --</p> <p>13 meeting to have those discussions.</p> <p>14 Q. What -- were the heat-related deaths serious</p> <p>15 incidents?</p> <p>16 A. Any death is a serious incident, but --</p> <p>17 Q. That wasn't a loaded question, sir.</p> <p>18 A. Okay.</p> <p>19 Q. Were they serious incidents requiring --</p> <p>20 A. They did not require a serious incident</p> <p>21 review, no, sir.</p> <p>22 Q. Tell me why not.</p> <p>23 A. Again, that's not a -- an item that the</p> <p>24 agency has historically listed as a serious incident</p> <p>25 review issue. And I would -- I would say, in most</p>	<p style="text-align: right;">236</p> <p>1 think, be something that should be discussed.</p> <p>2 Q. Okay. Let's take a look at April 2012. It</p> <p>3 looks like ten deaths in 2011. Psychotropic meds need</p> <p>4 to be considered.</p> <p>5 Again, is this more of the same?</p> <p>6 Weren't you already considering the need to -- it's on</p> <p>7 page 769, sir.</p> <p>8 A. Right.</p> <p>9 Q. Weren't you already considering people on</p> <p>10 psychotropic meds to be heat vulnerable and in need of</p> <p>11 your protection?</p> <p>12 A. Again, we were, and again, forgive me, but I</p> <p>13 don't remember the nature of that conversation.</p> <p>14 Q. Okay. All right. It says, one incident</p> <p>15 already this year, in 2012. Do you know what that is</p> <p>16 about?</p> <p>17 A. Again, I believe -- I believe this is the</p> <p>18 subject matter that for some reason Mr. Stephens was</p> <p>19 covering at the time, so...</p> <p>20 Q. Okay. Well, we'll ask him if you don't</p> <p>21 know. Okay. And, again, it says, make sure we are</p> <p>22 providing water and watching for signs.</p> <p>23 And this is -- again, this is stuff</p> <p>24 you've been saying since 2009. Right?</p> <p>25 A. Surely stuff that -- the direction we've</p>

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<p style="text-align: right;">237</p> <p>1 been reiterating for a number of years, yes, sir. 2 Q. Well, do you see any, you know, need to 3 reiterate it differently than telling the -- at the 4 regional directors meetings? I mean, did you ever 5 personally go down to the units and say, guys, enough 6 is enough, no more of this is going to happen, and 7 give a speech to the correctional officers? 8 A. Again, in -- in my capacity dealing with 9 35,000 individuals out there, dissemination of 10 information down the chain of command is surely 11 something that I have to rely on. And there was 12 wardens training that was conducted where I had an 13 opportunity to directly address all of the -- all of 14 the wardens. And then -- at that opportunity and 15 through my deputy directors through assistant wardens 16 training and majors training, we had an opportunity to 17 address these issues during their training period. 18 So -- but the reality of the beast is, although I 19 would love to be able to talk to every correctional 20 officer and every staff member out in the field about 21 every issue, the enormity of the agency makes that 22 quite difficult. 23 Q. How far is the Gurney Unit from where your 24 offices were located? 25 A. A couple of hours.</p>	<p style="text-align: right;">239</p> <p>1 but when you're dealing with the large numbers of 2 offenders and staff and you're dealing with the 3 weather in this state and you're dealing with the 4 environmental condition that -- that we deal with, 5 that number is not a -- not a number I -- out of a -- 6 to a magnitude that -- 7 Q. What is the basis for you saying that? That 8 that number is not out of the magnitude? 9 A. Well, again, just from my experience in the 10 system, knowing what we require our staff to do day 11 in, day out, inside and outside our institutions, 12 again, not having the data in front of me to see 13 exactly where these incidents occurred, it's hard for 14 me to determine whether or not that -- any of those 15 incidents required additional actions. 16 Q. Well, okay. And I don't know the 17 particulars of each incident, I'm just trying to 18 figure out, you're making -- you're implying that 19 there is lots of inmates and lots of correctional 20 officer, therefore, it's fair to expect 23 21 heat-related illnesses to your employees and to the 22 people in your custody. And I'm just trying to get a 23 flavor for how on earth you can make such a statement, 24 what is your baseline for that? 25 MR. GARCIA: Objection. Argumentative.</p>
<p style="text-align: right;">238</p> <p>1 Q. Okay. That -- that unit had multiple deaths 2 in the summer of 2011. Correct? 3 A. Yes, sir. It had two. 4 Q. All right. 5 (Deposition Exhibit No. 60 marked.) 6 Q. (BY MR. EDWARDS) Here you go. We're on to 7 June 2012, sir. 8 Okay. June 2012, after all this talk, 9 you still have, if you take a look at 783, 13 offender 10 heat-related incidents and ten employees so far. 11 Did I read that accurately, under EAC 12 Reports and Issues? 13 A. Yes, sir. 14 Q. Okay. It seems similar to the year before. 15 Well, it's in June, so maybe it's even higher than the 16 year before. Is that fair? 17 A. That's earlier in the summer, yes, sir. 18 Q. Okay. I mean, did it ever occur to you that 19 what you were doing wasn't getting through and wasn't 20 working? 21 A. Again, I think that as you look across the 22 parameters of the entire agency, many of the measures 23 we put in place were working well throughout the 24 majority of our facilities. Again, these are numbers. 25 Any incident is not a -- an incident we want to see,</p>	<p style="text-align: right;">240</p> <p>1 Q. (BY MR. EDWARDS) What is your baseline for 2 making a statement that 23 heat-related illnesses 3 during the month of June isn't outside the norm of an 4 agency of your size and scope? 5 MR. GARCIA: And I'll object to the 6 characterization as illnesses. 7 MS. COOGAN: Join. 8 A. And, again, just from my years of experience 9 in the agency, my interaction with our other divisions 10 in dealing with these particular situations, the 11 nature of our business and the requirement for us to 12 run operations 24 hours a day inside and outside our 13 institutions and support our facilities, to assume 14 that there would not be any heat-related illnesses 15 for -- on staff or offenders in our system, 16 particularly those that are performing job functions 17 for us, I would say would be, in my person, in my 18 personal opinion, outside the form of what society 19 deals with. 20 Q. (BY MR. EDWARDS) Okay. And it's just based 21 on your personal experience at the agency? 22 A. Yes, sir. 23 Q. If these numbers were coming out of nursing 24 homes in the state of Texas, do you think that that 25 would be a high incidence rate?</p>

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<p style="text-align: right;">241</p> <p>1 MR. GARCIA: Objection. Speculation. 2 MS. COOGAN: Absolutely. Incomplete 3 hypothetical, and inappropriate. 4 MR. ANASTASIDIS: Objection. 5 Irrelevant. 6 A. I would have no -- no way to determine what 7 the norm would be in nursing homes throughout the 8 state. 9 Q. (BY MR. EDWARDS) Are there any comparable 10 industries that you've assessed whether or not your 11 numbers are higher than their numbers? 12 A. Not a formal assessment, no, sir. 13 Q. Anybody ever thought, hey, let's look at 14 other industries where workers are exposed to heat and 15 compare the incidents in the Texas prison system with, 16 I don't know, people smelting ore or doing things like 17 that? Any thought on the -- at the prison system to 18 like look at that and determine whether or not there 19 is an excessive number of heat-related incidents? 20 MR. GARCIA: Objection. Compound. 21 Argumentative. Speculation. 22 Q. (BY MR. EDWARDS) Sir, I'm not asking you 23 for -- 24 MR. GARCIA: Multifarious and -- 25 Q. (BY MR. EDWARDS) -- a conclusion, I'm</p>	<p style="text-align: right;">243</p> <p>1 water in trash cans, what you recall about that. 2 A. What page are you on? 3 Q. I don't know. In the front on the agenda, 4 it says, boiling water in trash cans, and it says that 5 Mr. Stephens will talk about it. If you recall 6 anything about it. 7 A. Again, I would have to defer to Mr. Stephens 8 on that. 9 Q. Okay. Okay. It's on page 816. 10 A. Okay. 11 Q. It says, boiling water in trash cans. I 12 mean, that's -- 13 A. Okay. 14 Q. It seems like a dangerous practice. Was 15 that a dangerous practice to be employing at the Texas 16 Department of Criminal Justice? 17 A. From reviewing this note, it appears to 18 me -- and, again, I would defer to Mr. Stephens -- 19 that in some cases in our food service department 20 areas, there were offenders that were putting hot 21 water into plastic trash cans and moving it from one 22 area of the kitchen to another. And it appears that 23 this -- because that is a dangerous practice, that was 24 covered during this wardens -- or during the regional 25 directors meeting to disseminate to the wardens to</p>
<p style="text-align: right;">242</p> <p>1 asking, have you looked at any other industries to 2 determine whether or not there are a high number of 3 incidents of heat-related injury at the prison system? 4 A. No, I have not. 5 Q. And these aren't -- the incidents we're 6 talking about aren't just to inmates, they're also to 7 your employees. Right? 8 A. Yes, sir. 9 Q. Has OSHA, to your knowledge, contacted you 10 about the rate of heat-related incidents? 11 A. Not to my knowledge, no. 12 Q. Okay. On page 789, sir, it says that any 13 donation above \$500 has to go to the board for 14 approval. Is that just referring to charitable 15 donations or is that something else? 16 A. That's just referring to charitable 17 donations. 18 Q. All right. 19 (Deposition Exhibit No. 61 marked.) 20 Q. (BY MR. EDWARDS) Let's move on to 21 August 2012. August 18th. 22 MR. EDWARDS: There you go. 23 MR. ANASTASIDIS: Thank you. 24 MR. EDWARDS: Sure. 25 Q. (BY MR. EDWARDS) Tell me about the boiling</p>	<p style="text-align: right;">244</p> <p>1 their food service managers to make sure that practice 2 wasn't taking place. 3 Q. Okay. It says, potential for danger, tort 4 claims paid, do not use this practice, exclamation 5 point. Right? 6 A. Right. 7 Q. Okay. Do you think the fact that the tort 8 claims were paid helped end that practice? 9 A. No. That's a -- that's been a common -- 10 common discussion in the agency, I would say, by our 11 fire and safety staff. So in this particular 12 situation, I'm not sure what year we're talking about 13 in the tort claim or when this might have occurred, 14 but I'm assuming this was just a reiteration of what 15 should be a good common sense practice in the food 16 service department. 17 Q. Well, I agree that it would be a good common 18 sense practice, but for some -- was it condoned by the 19 department? 20 A. It wasn't condoned by me, no, sir, nor do I 21 know of anybody that condoned it. 22 Q. Okay. It was a dangerous practice and TDCJ, 23 to the best of your knowledge, has now gotten rid of 24 it? 25 A. To my knowledge, yes.</p>

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<p style="text-align: right;">245</p> <p>1 Q. All right. If you would take a look at 811, 2 sir, under the EAC Reports and Issues. 3 A. Yes, sir. 4 Q. It looks like in -- you know, in the summer 5 of 2012, at least through August 18th, you had 50 6 employee heat incidents? 7 A. Yes, sir. 8 Q. And 56 offender or prisoner heat incidents? 9 A. Yes, sir. 10 Q. And one person died? 11 A. Yes, sir. 12 Q. Do you recall who that was? 13 A. I believe that would -- on 816, that would 14 have been offender Adams, I believe. 15 Q. Okay. Do you know if anybody died after 16 offender Adams that summer? 17 A. There was one other at the Garza facility. 18 Hinojosa, maybe. 19 Q. Then on page 813, it's just more of the 20 same, the same type of training recommendations? 21 A. Discussing those issues, yes, sir. 22 Q. Still no -- still no discussion about air 23 conditioning or cooling? 24 A. No, sir. 25 Q. Okay. Let's talk about 820. At the top,</p>	<p style="text-align: right;">247</p> <p>1 inmates to protect themselves? 2 A. It would be the education, recreation 3 director, and I'm not sure who that is at this point. 4 Q. Okay. Did anyone think to make the chilled 5 towels available to inmates, I don't know, back in 6 2010, or 2011? 7 A. That was not discussed, no, sir. 8 Q. Okay. All right. If you could look at page 9 822. At the bottom of the page, it says, Health 10 Service Issues? 11 A. Yes, sir. 12 Q. And then it says your name, Thaler? 13 A. Yes, sir. 14 Q. It says, question medical orders that do not 15 make good practice. What does that mean? 16 A. That was just a reiteration to our staff in 17 the field that every division answers to somebody 18 higher in that division, and if there was a warden 19 that felt that an offender was not getting appropriate 20 medical treatment, that they should bump that up the 21 chain of command so that it could be addressed by a 22 higher level of health service staff or a higher level 23 of staff within the Correctional Institutions 24 Division. 25 Q. Was that a problem that wardens were</p>
<p style="text-align: right;">246</p> <p>1 under Breakout Agenda? 2 A. Yes, sir. 3 Q. It says, chill towels. 4 A. Yes, sir. 5 Q. What is the point of chilled towels? Is 6 that to help cool people? 7 A. Again, that's a -- a comfort effort. It's a 8 chilled towel that, basically, soaked in water, once 9 soaked in water, it would stay fairly cool for a 10 period of time. 11 Q. It looks like you're shipping them to sell 12 to people? 13 A. They were shipped to the unit commissaries, 14 yes, sir. 15 Q. Okay. So you didn't give them away as a 16 precaution, you offered them for sale to the inmates 17 if they'd like to buy them? 18 A. In this particular case, no, sir, they were 19 for sale. They were not issued to the offender 20 population. 21 Q. What do you make on chilled towels? 22 A. I couldn't speak to that. I don't know. 23 The commissary -- 24 Q. Who would know the profit margin on these 25 neon yellow chilled towels that you're selling to</p>	<p style="text-align: right;">248</p> <p>1 noticing, that people weren't getting the care they 2 needed from the health service providers? 3 A. In this particular case, I'm not sure 4 whether that was in reference to a particular 5 situation. I would assume there would have been 6 something that would have caused that conversation to 7 take place. In most cases, those situations are 8 resolved between senior level health service staff, 9 either within the division or maybe within UTMB, but 10 we just want to make sure that wardens, when they felt 11 the issue was not appropriately addressed, that they 12 continued to pursue that issue. 13 Q. So it's not okay for a warden or a 14 correctional officer who sees someone in need to just 15 say, hey, that's UTMB's problem, not our problem. 16 Fair? 17 A. We have an obligation to allow those 18 individuals to have access to health care 19 professionals. 20 Q. Okay. And then we've got, on page 823, more 21 of the same, do everything we can to ease heat issues. 22 Do you see that? 23 A. Yes, sir. 24 Q. Do you believe the department is doing 25 everything it can to help ease heat issues?</p>

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<p style="text-align: right;">249</p> <p>1 A. I believe that we're doing many things to 2 help ease heat issues. I think that the department, 3 as always, needs to continue to look at whatever is 4 available out there to assist in that process. 5 Q. One of the things that's available to assist 6 in that process is cooling mechanisms. Right? 7 Misters. 8 MR. GARCIA: Objection. Vague, cooling 9 mechanisms. 10 MS. COOGAN: Repetitive. 11 MR. GARCIA: Oh, asked and answered. 12 Q. (BY MR. EDWARDS) Sir, one of the things 13 that's out there are cooling mechanisms like misters 14 or air conditioning. Right? 15 MR. GARCIA: Objection. Asked and 16 answered. 17 A. Again, that is -- a litany of options are 18 out there. And if the agency were to consider cooling 19 devices, that would be an option, yes. 20 Q. (BY MR. EDWARDS) All right. 21 (Deposition Exhibit No. 62 marked.) 22 Q. (BY MR. EDWARDS) Take a look at -- 23 MR. ANASTASIDIS: What exhibit are you 24 on, Jeff? 25 MR. EDWARDS: Oh, I'm sorry.</p>	<p style="text-align: right;">251</p> <p>1 susceptible to heat-related illnesses and we're doing 2 our wellness checks. 3 Q. Okay. Now, if you look at page 912, sir. 4 It says, heat related mediation and a handout. 5 On page 912, sir. 6 A. I'm there. 7 Q. Did you participate in that breakout agenda 8 and discuss the heat related mediation? 9 A. This -- this -- again, from the document I'm 10 reviewing here and Mr. Stephens' notes here, I'm -- 11 again, I'm not sure I was there when those items were 12 covered, because that continues with Mr. Stephens and 13 Mr. Prasifka. To the best of my recollection, they 14 might have held even that portion of the meeting. I 15 did at some point in time come in, though, because 16 there is agenda items that I covered at the end of 17 this -- at the end of this meeting. So, again, what 18 days that agenda was covered, I'm not sure. This was 19 during the legislative session, so there were many 20 days when I was not in the Huntsville area. 21 Q. Okay. Are you aware that there was a 22 mediation in this case, and I assume that that's what 23 was handed out. But were you ever made privy to that 24 document? 25 A. I did see that document, I think, just prior</p>
<p style="text-align: right;">250</p> <p>1 Q. (BY MR. EDWARDS) Sir, what exhibit is that? 2 MR. EDWARDS: Did I give you that, 3 Demetri? 4 MR. ANASTASIDIS: No. 5 MR. EDWARDS: 62. 6 Q. (BY MR. EDWARDS) April 11th, 2013. 7 MR. ANASTASIDIS: Thank you. 8 MR. EDWARDS: You're welcome. 9 Q. (BY MR. EDWARDS) Okay. Take a look at page 10 906, please, sir. 11 A. Okay. 12 Q. Is says that there is an April 19th meeting. 13 Do you see that? 14 A. Yes. 15 Q. E-mail will come out system-wide after 16 meeting. 17 Is that different than the e-mail that 18 had previously been sent out? 19 A. This one in 2013 would have been slightly 20 different, yes, sir. 21 Q. What would have been different about it? 22 A. The inclusion wellness checklist, and the 23 discussion of assuring we're working closely with 24 Health Services Division on every facility to make 25 staff aware of those offenders that are more</p>	<p style="text-align: right;">252</p> <p>1 to -- just prior to my retirement, I believe. It 2 might have been the month before. 3 Q. Okay. All right. Just give me one second. 4 A. Okay. 5 Q. When exactly did you retire, sir? 6 A. The effective date was May 31st. 7 Q. May 31st? 8 A. May 31st. 9 Q. Okay. And in terms of effective date, did 10 you stay a couple of weeks later or did you stay -- 11 A. No. No. I was gone prior to May 31st, but 12 May 31st was the official date. 13 Q. Okay. So as of May 31 of this year, 2013, 14 any questions in terms of running the criminal -- 15 excuse me -- the Correctional Institutions Division 16 should be directed to Mr. Stephens. Is that fair? 17 A. Yes, sir. 18 Q. Okay. All right. 19 MR. ANASTASIDIS: Excuse me. Could you 20 update us when you get a chance on how much time has 21 been used in this deposition. 22 Q. (BY MR. EDWARDS) Just a few more questions, 23 sir. 24 A. Okay. 25 Q. And I understand -- I'm tired, too, so I</p>

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<p style="text-align: right;">253</p> <p>1 appreciate that. Not as tired as I'm sure you're 2 going to be after this, but did you ever review the 3 autopsy reports of the individuals that your agency 4 concluded died heat-related deaths while inside the 5 housing areas? 6 MR. GARCIA: Objection. 7 Mischaracterizes the evidence. 8 A. Again, of those ten incidents that were 9 in -- occurred in 2011, whether I reviewed the entire 10 autopsies or not I can't say for sure. But I would 11 say that I have seen most of them and surely had 12 discussions with the health service department in 13 reference to the issues and the findings. 14 Q. And I apologize. Let me just ask it one 15 more time to just deal with the objection. 16 A. Okay. 17 Q. Of the deaths that on your internal 18 documents are described as heat-related deaths that 19 you were talking about during your directors 20 meetings -- 21 A. Right. 22 Q. -- have you reviewed the autopsies for those 23 incidents? 24 A. In most all situations, yes. 25 Q. Okay. Sir, you'll have a chance to review</p>	<p style="text-align: right;">255</p> <p>1 ultimately lead to their death if they're placed in 2 extremely hot temperatures. Right? 3 A. Sure. And I feel that the system and 4 policies that are in place now allow for, again, as I 5 mentioned earlier, that review prior to their 6 transportation into any of our facilities, and then 7 the subsequent review from the health service provider 8 upon intake that I believe, if functioning properly, 9 allows us to properly classify and house that 10 offender, whatever those restrictions might be. 11 Q. Okay. 12 MR. EDWARDS: And let me just object as 13 nonresponsive after the word "sure." But I very much 14 appreciate your time, sir, and it has been long 15 enough. But thank you very much. Okay? 16 We'll pass the witness. 17 MR. ANASTASIDIS: No questions. 18 MS. COOGAN: I have a couple, but I 19 promise I'll go fast, Mr. Thaler. 20 EXAMINATION 21 BY MS. COOGAN: 22 Q. Mr. Thaler, I'm going to preface these 23 questions with, do you know the answer, because you 24 might not. 25 A. Okay.</p>
<p style="text-align: right;">254</p> <p>1 your deposition and read it, I'm letting you know. 2 But as you testify here today, is there anything that 3 you just feel, look, I need to change an answer or 4 anything like that? 5 A. Again, I am sure as I read my deposition I 6 will be -- be aware of a statement that I made 7 unintentionally, but nothing jumps out at me at this 8 point right now that I would need to correct at this 9 time. 10 Q. Okay. You certainly don't think there is 11 anything right now that you'd say, hey, look, 12 Mr. Edwards, I misspoke here? You'll have an 13 opportunity to read it to double check, but nothing is 14 jumping out right now? 15 A. No. The only -- the only one issue that 16 I -- again, I'll have to go back and review my 17 statement that I can think of right now is the -- the 18 issue of the -- the formal -- formalization of the 19 policy and whether or not that is a -- a hole in the 20 current system. But, again, I'd have to review my 21 testimony and -- and see if I said what I meant to 22 say. 23 Q. Sure. Certainly you would agree that when 24 inmates arrive at TDCJ jails that they need to be 25 assessed for serious medical conditions that can</p>	<p style="text-align: right;">256</p> <p>1 Q. And that's fine. 2 A. Okay. 3 Q. Do you know how many new inmates come into 4 the system from county jail each week, system-wide, 5 approximately? 6 A. Intake for the system, I don't know that I 7 have a weekly figure, but intake for the system on an 8 annual basis is approximately 72,000. 9 Q. So in addition to the 150,000 that you have 10 on a regular basis, some of those people leave and 11 then approximately 72,000 new ones come in each year? 12 A. That was -- that was the figure that held 13 over the last few years when I was in office. 14 Q. I want to ask you about the -- the policy 15 that came out in 2011 or the beginning of 2012 related 16 to the heat lists or the wellness checklists. Is that 17 different or -- from the work restrictions that come 18 off of the HSM 18? 19 A. Again, the mechanisms that health services 20 utilizes to -- to notify staff, I believe they use the 21 same system in order to generate that list, but I 22 would -- I'm not for sure. 23 Q. Okay. 24 MR. EDWARDS: Let me object to the 25 extent that calls for speculation.</p>

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<p style="text-align: right;">257</p> <p>1 Q. (BY MS. COOGAN) And let me preface the 2 question with, if you know. 3 A. Okay. 4 Q. And this is something I don't know, and so 5 I'm just trying to understand it, who would know. 6 Isn't it right that when -- that the 7 medical personnel from UTMB either participate in or 8 complete the HSM 18, the document that has the work 9 restrictions on it, do you know what I'm referring to? 10 A. I know what document you're referring to, 11 yes, ma'am. 12 Q. Okay. And do you know if that HSM 18 then 13 goes either to classification or the count room or 14 somewhere and a work roster is generated that tells 15 sergeants who has a work restriction and who doesn't? 16 Do you know if that's right? 17 MR. EDWARDS: Objection. Foundation. 18 A. Again, I am not sure. I can't answer that 19 question. 20 Q. (BY MS. COOGAN) Okay. That's fine. I'll 21 ask somebody else. 22 And then my real question is, when 23 y'all -- I know -- when y'all came up with this policy 24 for the wellness check in 2011, 2012, do you know if 25 that was something that was the same as or different</p>	<p style="text-align: right;">259</p> <p>1 air conditioned cell, that y'all, TDCJ, could make 2 that happen? 3 A. Yes, ma'am, we would have to make that 4 happen. 5 Q. And my question for you is, do you know if 6 there are even enough air conditioned cells to 7 accommodate all of the people, inmates, who would be 8 on this list? 9 A. Again, not knowing the -- that number, or 10 those that University of Texas Medical Branch would 11 designate as a necessary housing restriction, I cannot 12 answer that question. 13 Q. And so can you even say for sure that -- 14 that you would have enough air conditioned cells or 15 beds to accommodate UTMB if they made such a request? 16 A. Again, not knowing what that request would 17 be, I can't answer that question. 18 Q. Okay. Do you know who decides, between UTMB 19 or TDCJ or Correctional Managed Health Care Committee 20 or the legislature, do you know who decides how many 21 air conditioned cells there will be? 22 A. I guess in that case I'm going to have to 23 again respond, no, I do not. 24 Q. That's okay. I've been trying to find out 25 for a long time. You're not the first one who doesn't</p>
<p style="text-align: right;">258</p> <p>1 from this list that came off the HSM 18, do you know? 2 A. I do not. 3 Q. Okay. Do you know how many air conditioned 4 beds there are system-wide? 5 A. Specific number of beds, I would have to 6 research that. I could not tell you the specific 7 number of beds. 8 Q. Okay. Or air conditioned cells? 9 A. Again, the same response. 10 Q. Do you know how many inmates system-wide 11 would go on this wellness checklist because they have 12 psychotropic medications, high blood pressure, 13 depression, diabetes, or obesity, do you know 14 system-wide if -- how many people would be on that 15 list? 16 MR. EDWARDS: I've got to object to the 17 foundation of that, but -- 18 MS. COOGAN: That's the "do you know" 19 part. 20 MR. EDWARDS: Not really. 21 Q. (BY MS. COOGAN) Do you know? 22 A. No, ma'am, I do not know. 23 Q. Okay. And so this is not a loaded question 24 or a trick question or anything like that. You said 25 earlier that if UTMB said somebody needs to be in an</p>	<p style="text-align: right;">260</p> <p>1 know. 2 And do you know if -- how the number of 3 air conditioned beds, how it's decided? If it's a 4 percentage or if it's -- 5 A. No, I do not. 6 Q. Okay. Let me just show you this. 7 MS. COOGAN: Can I have a sticker? 8 (Deposition Exhibit No. 63 marked.) 9 Q. (BY MS. COOGAN) What has been marked as 10 Exhibit 63, which is a mediated proposal update, and 11 ask you if you have just ever seen that before? 12 A. This is the document I believe that I saw a 13 copy of prior -- just prior to leaving the 14 organization. 15 Q. Do you know if anybody from UTMB 16 participated in the negotiation of that document or 17 creation of that document? 18 A. No, I do not. 19 Q. And do you know if TDCJ, while you were 20 there, changed or made any policies based on that 21 proposal? 22 A. Again, you referenced policies, so that 23 policy revision or development would take a while. 24 So, no, while I was still there, I don't know of any 25 policies that were redrafted and finalized prior to my</p>

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<p style="text-align: right;">261</p> <p>1 departure.</p> <p>2 MR. EDWARDS: Let me object as</p> <p>3 nonresponsive.</p> <p>4 Q. (BY MS. COOGAN) Do you know if anything at</p> <p>5 TDCJ got changed because of that? The same question</p> <p>6 but I'm getting around his objection.</p> <p>7 Do you know if any policy, procedure,</p> <p>8 AD, anything got changed or added or modified or an</p> <p>9 e-mail went out because of that policy? Excuse me,</p> <p>10 that proposal?</p> <p>11 MR. EDWARDS: Let me object to the</p> <p>12 characterization. That mediation agreement I believe</p> <p>13 is what you showed him. Right?</p> <p>14 MS. COOGAN: Well, I'm going to say</p> <p>15 Exhibit 63. But it says "proposal" on it, and I</p> <p>16 didn't see your signature, so I didn't assume it was</p> <p>17 an agreement. But if you're telling me it is. Is it?</p> <p>18 MR. EDWARDS: I need to look at it.</p> <p>19 There is an agreement. I thought that's what you</p> <p>20 handed him, but is that not true?</p> <p>21 MS. COOGAN: Let me make a request for</p> <p>22 production for that.</p> <p>23 MR. EDWARDS: Sure.</p> <p>24 Q. (BY MS. COOGAN) If you know. It's not a</p> <p>25 trick question.</p>	<p style="text-align: right;">263</p> <p>1 opinion that those officers could benefit from some</p> <p>2 retraining. Did I characterize that correctly, sir?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And I would assume by those officers --</p> <p>5 well, if you could tell me, which officers you are</p> <p>6 referring to in regards to that answer specifically,</p> <p>7 sir?</p> <p>8 A. In response to that question, it would have</p> <p>9 been the -- the staff that initially responded to the</p> <p>10 incident.</p> <p>11 Q. Would that be the CO, the first CO who</p> <p>12 arrived on the scene as one of those individuals,</p> <p>13 possibly?</p> <p>14 A. Yes, sir, it would be.</p> <p>15 Q. Would that be the sergeant who then</p> <p>16 responded to the scene at the request of the CO?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And then would that also include the</p> <p>19 lieutenant who responded at the request of the</p> <p>20 sergeant?</p> <p>21 A. Again, as a unit administrator, as I</p> <p>22 addressed that, not judging the performance of any of</p> <p>23 those individuals, I think it would be essential and</p> <p>24 imperative that we ensured that we emphasized to staff</p> <p>25 the immediate need to not -- to request assistance</p>
<p style="text-align: right;">262</p> <p>1 A. Again, some of these actions were</p> <p>2 continuous. As far as the development of a formal</p> <p>3 policy that was drafted and disseminated, it did not</p> <p>4 happen prior to me leaving the agency in May.</p> <p>5 MS. COOGAN: That's all the questions I</p> <p>6 have. Thank you.</p> <p>7 EXAMINATION</p> <p>8 BY MR. GARCIA:</p> <p>9 Q. Director, my name is Bruce Garcia and I</p> <p>10 represent the regional director, and the officers off</p> <p>11 the Hutchins Unit in this facility -- I mean, this</p> <p>12 incident. And I wanted to ask you just a few</p> <p>13 questions about your review of the McCollum incident</p> <p>14 report. Okay? Do you remember the EAC report you</p> <p>15 testified to earlier regarding offender McCollum?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And you gave some testimony in that -- in</p> <p>18 that area regarding the actions of the correctional</p> <p>19 staff on the Hutchins facility. Do you recall that</p> <p>20 testimony?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And I believe your testimony -- and if sum</p> <p>23 it up incorrectly, please tell me so -- essentially</p> <p>24 was that in hindsight, looking back at their actions</p> <p>25 on that evening of July 22nd of 2011, that it was your</p>	<p style="text-align: right;">264</p> <p>1 from a health service professional and not -- not</p> <p>2 carry that load on their shoulders.</p> <p>3 Q. So it's your belief that they should have</p> <p>4 simply just made the medical call quicker and not</p> <p>5 waited as long as they did. Is that correct?</p> <p>6 A. Again, I'm -- I wasn't at the -- at the</p> <p>7 scene, so I don't know what circumstances those</p> <p>8 individuals were dealing with. But in hindsight,</p> <p>9 after evaluating the facts, I'm sure in most cases</p> <p>10 they might come to the same conclusion.</p> <p>11 Q. And in regards to your conclusion, I want to</p> <p>12 make sure I understand what your conclusion is in</p> <p>13 this -- in the McCollum incident. Okay? Is it your</p> <p>14 conclusion that if the officers had responded quicker</p> <p>15 that Mr. McCollum would be alive today, or is it</p> <p>16 simply your conclusion that they needed to take that</p> <p>17 chance to maybe see if he would be alive today?</p> <p>18 A. Again, I don't -- I can't speak to the fact</p> <p>19 of actually the results of the medical evaluation of</p> <p>20 the offender, so I can't speak as to the fact of</p> <p>21 whether or not that individual would have suffered any</p> <p>22 different end result because of any actions or</p> <p>23 inactions of the staff.</p> <p>24 Q. Okay.</p> <p>25 MR. GARCIA: Thank you. No further</p>

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<p style="text-align: right;">265</p> <p>1 questions.</p> <p>2 MR. EDWARDS: Nothing here.</p> <p>3 MR. ANASTASIDIS: I don't have any more</p> <p>4 questions.</p> <p>5 Do you want to go on to Mr. Stephens?</p> <p>6 THE VIDEOGRAPHER: That concludes the</p> <p>7 deposition. The time right now is 4:35 p.m.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">266</p> <p>1 CHANGES AND CORRECTIONS</p> <p>2 RICHARD C. THALER - October 18, 2013 VOLUME 1</p> <p>3 [DISREGARD IF WAIVED]</p> <p>4</p> <p>Reason Codes: (1) to clarify the record; (2) to</p> <p>5 conform to the facts; (3) to correct a transcription</p> <p>error; (4) other (please explain).</p> <p>6 PAGE/LINE CHANGE REASON CODE</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 JOB NO. 131018BJW</p>	<p style="text-align: right;">267</p> <p>1 SIGNATURE</p> <p>2</p> <p>3 I, RICHARD C. THALER, have read the</p> <p>4 foregoing deposition and hereby affix my signature</p> <p>5 that same is true and correct, except as noted above.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 RICHARD C. THALER</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">268</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 STEPHEN McCOLLUM, §</p> <p>5 STEPHANIE KINGREY, AND §</p> <p>6 SANDRA McCOLLU, §</p> <p>7 INDIVIDUALLY AND AS §</p> <p>8 HEIRS AT LAW TO THE §</p> <p>9 ESTATE OF LARRY GENE §</p> <p>10 McCOLLUM, § CIVIL ACTION NO.</p> <p>11 Plaintiffs, § 3:12-CV-02037</p> <p>12 VS. §</p> <p>13 §</p> <p>14 BRAD LIVINGSTON, JEFF §</p> <p>15 PRINGLE, RICHARD CLARK, §</p> <p>16 KAREN TATE, SANDREA §</p> <p>17 SANDERS, ROBERT EASON, §</p> <p>18 THE UNIVERSITY OF TEXAS §</p> <p>19 MEDICAL BRANCH AND THE §</p> <p>20 TEXAS DEPARTMENT OF §</p> <p>21 CRIMINAL JUSTICE, §</p> <p>22 Defendants. §</p> <p>23</p> <p>24</p> <p>25</p> <p>14 REPORTER'S CERTIFICATION</p> <p>15 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>16 RICHARD C. THALER</p> <p>17 VOLUME 1</p> <p>18 October 18, 2013</p> <p>19</p> <p>20 I, BRENDA J. WRIGHT, Certified Shorthand</p> <p>21 Reporter in and for the State of Texas, hereby certify</p> <p>22 to the following:</p> <p>23 That the witness, RICHARD C. THALER, was duly</p> <p>24 sworn by the officer and that the transcript of the</p> <p>25 oral deposition is a true record of the testimony</p> <p>given by the witness;</p> <p>I further certify that pursuant to Federal</p> <p>Rules of Civil Procedure, Rule 30(e)(1)(A) and (B) as</p>
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<p style="text-align: right;">269</p> <p>1 well as Rule 30(e)(2) that the signature of the 2 deponent: 3 <u> X </u> was requested by the deponent and/or a 4 party before completion of the deposition and is to be 5 returned within 30 days from date of receipt of the 6 transcript. If returned, the attached Changes and 7 Corrections and Signature pages contain any changes 8 and the reasons therefor; 9 <u> </u> was not requested by the deponent and/or a 10 party before the completion of the deposition. 11 That \$ <u> </u> is the deposition 12 officer's charges for preparing the original 13 deposition transcript and any copies of exhibits, 14 charged to PLAINTIFFS; 15 That pursuant to information given to the 16 deposition officer at the time said testimony as 17 taken, the following includes all parties of record: 18 For the Plaintiffs: 19 Mr. Jeff Edwards 20 THE EDWARDS LAW FIRM 21 The Haehnel Building 22 1101 East 11th Street 23 Austin, Texas 78702 24 512-623-7727/512-623-7729 (fax) 25 jeff@edwards-law.com -and- Mr. Scott Medlock TEXAS CIVIL RIGHTS PROJECT 1405 Montopolis Drive Austin, Texas 78741 512-474-5073/512-474-0726 (fax)</p>	<p style="text-align: right;">271</p> <p>1 the action. 2 Certified to by me this <u>28TH</u> day of <u>OCTOBER</u> 3 2013. <i>Brenda J. Wright</i> 4 5 BRENDA J. WRIGHT, Texas CSR No. 1780 6 Expiration Date: 12-31-14 7 WRIGHT WATSON & ASSOCIATES 8 Firm Registration No. 225 9 Expiration Date: 12-31-13 10 3307 Northland Drive 11 Suite 185 12 Austin, Texas 78731 13 512-474-4363/51-474-8802 (fax) 14 www.wrightwatson.com 15 JOB NO. 131018BJW 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">270</p> <p>1 For the Defendants Jeff Pringle, Richard Clark, Karen 2 Tate, Sandra Sanders, Robert Eason and Texas 3 Department of Criminal Justice: 4 Mr. Bruce R. Garcia 5 Assistant Attorney General 6 OFFICE OF THE ATTORNEY GENERAL OF TEXAS 7 Law Enforcement Defense Division 012 8 Post Office Box 12548 9 300 West 15th Street 10 Austin, Texas 78711-2548 11 512-463-2080/512-495-9139 (fax) 12 bruce.garcia@texasattorneygeneral.gov 13 14 For the Defendants Brad Livingston, William Stephens 15 and Richard Thaler: 16 Mr. Demetri Anastasidis 17 Assistant Attorney General 18 OFFICE OF THE ATTORNEY GENERAL OF TEXAS 19 Law Enforcement Defense Division 012 20 Post Office Box 12548 21 300 West 15th Street 22 Austin, Texas 78711-2548 23 512-463-2153/ 512-495-9139 (fax) 24 demetri.anastasidis@texasattorneygeneral.gov 25 14 For the Defendant University of Texas Medical Branch: 15 Ms. Kim Coogan 16 Assistant Attorney General 17 OFFICE OF THE ATTORNEY GENERAL OF TEXAS 18 Law Enforcement Defense Division 19 Post Office Box 12548 20 Austin, Texas 78711-2548 21 512-463-2080/512-495-9139 (fax) 22 kim.coogan@texasattorneygeneral.gov 23 24 I further certify that I am neither attorney 25 nor counsel for nor related to nor employed by any of the parties to the action in which this deposition is taken; Further, I am not a relative nor an employee of any attorney of record in this cause, nor am I financially or otherwise interested in the outcome of</p>	

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